

No. 14552

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**United States**  
**Court of Appeals**  
**For the Ninth Circuit.**

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BLAIR HOLDINGS CORPORATION, a Corporation;  
BLAIR-ROLLINS & CO., INCORPORATED, a Corporation, and BLAIR & CO.,  
INC., OF NEW YORK, a Corporation,

Appellants,

VS.

BAY CITY BANK AND TRUST COMPANY, a  
Corporation,

Appellee.

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**Transcript of Record**

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**Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.**

**FILED**

**MAR 10 1955**

**PAUL P. O'BRIEN,**

**CLERK**



No. 14552

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**United States**  
**Court of Appeals**  
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BLAIR-ROLLINS & CO., INCORPORATED, a Corporation, and BLAIR & CO.,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco 4, Calif.,

Attorneys for Plaintiffs and Appellees.





In the District Court of the United States for the  
Northern District of California, Southern Division

No. 31082

DEAN WITTER, JEAN C. WITTER, GUY  
WITTER, JOHN WITTER, PHELPS WIT-  
TER, AUSTIN BROWN, EATON TAYLOR,  
RICHARD W. KELLETT, RALPH E.  
PHILLIPS, CHARLES H. CLAY, FRANK  
F. WALKER, DEAN WITTER, JR.,  
LLOYD C. STEVENS, HAROLD W. SCOTT,  
WENDELL W. WITTER, EDWIN D. WIT-  
TER, G. WILLARD MILLER, J. BRAD-  
FORD CROW, JR., HERMAN H. MICH-  
ELS, SHIRLEY HOUGHTON, TALBOT  
P. KENDALL, PHILIP J. FITZGERALD,  
BERTRAND J. FOLEY, DOUGLAS G.  
ATKINSON, TOWNLEY W. BALE, WIL-  
LIAM M. WITTER, FRANK T. McCOR-  
MICK, Individually and as Partners in DEAN  
WITTER & CO., a Copartnership,

Plaintiffs,

vs.

BLAIR HOLDINGS CORPORATION, a Corpo-  
ration, BLAIR-ROLLINS & CO., INCORPO-  
RATED, a Corporation, BLAIR & CO., INC.  
OF NEW YORK, a Corporation, BAY CITY  
BANK & TRUST CO., a Corporation, VIR-  
GIL D. DARDI, PAUL RICE, E. J. CRO-  
FOOT, PHILLIP BARNETT,

Defendants.

## COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. This action is brought pursuant to the provisions of sections 1335 and 2361 of Title 28 of the United States Code and involves a controversy between citizens of different states, and the matter in controversy exceeds, exclusive of interest and costs, the sum of \$500. Plaintiffs are suing as individuals and as members of a limited partnership known as Dean Witter & Co., having its principal place of business at No. 45 Montgomery Street, San Francisco, California, and having as general partners the following: Dean Witter, Jean C. Witter, Guy Witter, John Witter, Phelps Witter, Austin Brown, Eaton Taylor, Richard W. Kellett, Ralph E. Phillips, Charles H. Clay, Frank F. Walker, Dean Witter, Jr., Lloyd C. Stevens, Harold W. Scott, Wendell W. Witter, Edwin D. Witter, G. Willard Miller, J. Bradford Crow, Jr., Herman H. Michels, Shirley Houghton, Talbot P. Kendall, Philip J. Fitzgerald, Bertrand J. Foley, Douglas G. Atkinson, Townley W. Bale, William M. Witter and Frank T. McCormick; and as limited partners the following: Daniel G. Volkmann, William P. Roth and Clay H. Sorrick.

Plaintiffs have complied with the requirements of California Civil Code sections 2466 and 2468.

2. Defendant Blair Holdings Corporation is a corporation incorporated under the laws of the State of New York. Defendant Blair-Rollins & Co., Incorporated, is a corporation incorporated

under the laws of the State of Delaware. Defendant Blair & Co., Inc., of New York is a corporation incorporated under the laws of the State of California. Plaintiffs are informed and believe and therefore allege that defendant Bay City Bank & Trust Co. is a corporation incorporated under the laws of the State of Texas. Defendant Virgil D. Dardi is a resident of the City and County of San Francisco, State of California. Defendant Phillip Barnett is a resident of the City and County of San Francisco, State of California. Defendant E. J. Crofoot is a resident of the City of Sacramento, State of California. Plaintiffs are informed and believe and therefore allege that defendant Paul Rice is a resident of the City and County of San Francisco, State of California.

3. Plaintiffs will hereinafter be referred to collectively and as members of said partnership as plaintiff. Plaintiff is holding 2,000 shares of stock of Blair Holdings Corporation, a corporation, consisting of the following certificates: Nos. 6201 to 6216, inclusive, registered in the name of Dean Witter & Co., together with certificates Nos. SH-10652, S-13739, N-3931 and NH-1736, in street form, each certificate being for 100 shares. Said stock was received by plaintiff pursuant to certain escrow instructions contained in a letter to plaintiff dated May 26, 1950, signed by Phillip Barnett and Henry C. Clausen, which said letter incorporates by reference a stipulation executed in counterpart dated May 19, 1950. A true copy of said letter and stipu-

lation is attached hereto, and by reference incorporated herein and made a part hereof as Exhibit A. By the terms of said escrow instructions plaintiff is to hold said stock in escrow, "pending a written order releasing the same on order of Crofoot and Blair or the order or award of said arbitrator directing said release." Plaintiff has never received the orders or order referred to in said escrow instructions.

4. On September 11, 1951, the sheriff of the City and County of San Francisco served upon plaintiff a purported writ of execution and notice of levy purporting to levy upon all moneys, credits, effects, debts, due or owing E. J. Crofoot. Said levy purported to be on behalf of Blair Holdings Corporation pursuant to a judgment purportedly entered in favor of Blair Holdings Corporation and against E. J. Crofoot in consolidated actions in the Superior Court of the State of California, in and for the City and County of San Francisco, entitled, "E. J. Crofoot, Plaintiff, vs. Virgil Dardi, etc., et al., Defendants," No. 386971, and "Bay City Bank & Trust Co., a corporation, Plaintiff and Cross Defendant, vs. Blair Holdings Corporation, a corporation et al., Defendants, Cross Complainants and Cross Defendants," No. 383427.

5. On November 14, 1951, defendant Phillip Barnett wrote plaintiff a letter making claim to 1,600 shares of said stock purporting to do so (a) as attorney for and on behalf of Bay City Bank & Trust Co., a corporation, and (b) on his own



behalf. Said letter likewise stated that 400 shares of said stock had been furnished by Virgil D. Dardi, and that neither Bay City Bank & Trust Co. nor Phillip Barnett made any claim to said 400 shares.

6. On November 14, 1951, defendant Phillip Barnett purporting to act as the depositor of 1,600 shares of said stock requested that said stock be sold and the proceeds remitted to him personally.

7. Each of the defendants are claiming or may claim some right, title or interest in and to said stock. Said claims are conflicting and adverse as between defendants Blair Holdings Corporation and defendant Phillip Barnett, and as between defendant Blair Holdings Corporation and defendant Bay City Bank & Trust Co., and said claims may be adverse as between all or some of the remaining defendants. Plaintiff is ignorant of the respective rights of said defendants as among themselves and cannot without hazard to itself undertake to decide as to the validity of said conflicting claims or any thereof as among said defendants asserting same, and it is not proper that plaintiff be required to do so. Plaintiff disclaims any interest in said stock so held in escrow except to release and deliver said stock to whosoever is lawfully entitled thereto.

8. By reason of said conflicting claims plaintiff is in great doubt as to who among said defendants is entitled to all or any part of said stock, and plaintiff is in great danger of being harrassed and

damaged and cannot safely release and deliver said stock or recognize any of said claims without the aid of this court. Plaintiff has no plain, speedy or adequate remedy at law for determining said claims and has been obliged to employ attorneys for the purpose of prosecuting this suit and to incur obligation for attorneys' fees herein.

9. Contemporaneously with the filing of this complaint plaintiff has deposited said stock with the clerk of the above-entitled court. Said stock has a fair market value in excess of \$500.

Wherefore, plaintiff prays as follows that:

1. Defendants be decreed to interplead and settle among themselves their rights or claims with relation to said stock and with relation to said escrow instructions;

2. Plaintiff be released from all further liability on account of said stock and on account of said escrow instructions;

3. Plaintiff be allowed reasonable attorneys' fees and its costs as a condition precedent to the delivery to whosoever is entitled thereto of said stock which plaintiff has deposited with the clerk of this court and which is the subject of this proceeding;

4. Defendants and each of them be restrained pursuant to section 2361 of Title 28 of the United States Code from instituting or prosecuting any proceeding in any state or United States court affecting said stock, and specifically that defendant

Blair Holdings Corporation, a corporation, be enjoined from prosecuting any further proceedings by it pursuant to or in any way related to the purported writ of execution and notice of levy served upon plaintiff in those certain consolidated actions entitled, "E. J. Crofoot, Plaintiff, vs. Virgil Dardi, etc., et al., Defendants," No. 386971, and "Bay City Bank & Trust Co., a corporation, Plaintiff and Cross Defendant, vs. Blair Holdings Corporation, a corporation, et al., Defendants, Cross Complainants and Cross Defendants," No. 383427.

5. Such other relief be awarded by this court as may be proper in the premises.

Dated: This 5th day of December, 1951.

PILLSBURY, MADISON &  
SUTRO,

/s/ MAURICE D. L. FULLER,

/s/ DONALD G. McNEIL,

Attorneys for Plaintiff.

Duly verified.

## EXHIBIT A

Law Offices  
PHILLIP BARNETT  
2810 Russ Building  
San Francisco 4  
GARfield 1-5108

May 26, 1950.

Dean Witter & Co.,  
45 Montgomery Street,  
San Francisco, California.

Attention: Mr. Cronin.

Re: Bay City Bank and Trust Company.

Gentlemen:

You are hereby instructed that you shall hold in escrow 2,000 shares of Blair Holdings Corporation stock at no expense to Blair Holdings Corporation, identified by certificate numbers 6201 to 6216, representing 100 shares each and certificates numbers SH 10652, S 13739, N 3931 and NH 1736, representing 100 shares each.

Said escrow is pursuant to that certain stipulation, copy of which is attached hereto, dated May 19, 1950, and which stipulation is in connection with litigation now pending in the Superior Court of the State of California, in and for the City and County of San Francisco, Number 383427, involving Bay City Bank and Trust Company, a corporation, and Blair Holdings Corporation, a corporation.



You shall release these shares in accordance with the provisions contained in said stipulation.

Yours truly,

/s/ PHILLIP BARNETT,

BLAIR HOLDINGS  
CORPORATION,

By /s/ HENRY C. CLAUSEN.

In the Superior Court of the State of California,  
in and for the City and County of San Francisco

No. 383427

BAY CITY BANK AND TRUST COMPANY,  
a Corporation,

Plaintiff,

vs.

BLAIR HOLDINGS CORPORATION, a Corpora-  
tion, et al.,

Defendants.

### STIPULATION

This stipulation is entered into this 19th day of May, 1950, between Bay City Bank and Trust Company, a corporation, referred to as Bay City, and Blair Holdings Corporation, a corporation, referred to as Blair, parties to the above litigation now pending and being presently heard before Mr. George Osborne, Arbitrator, pursuant to Arbitration Agreement dated March 6, 1950, between above

parties and others whose signatures hereto are necessary so as not to affect the terms and conditions of the aforesaid Arbitration Agreement in any particular except to effectuate the purpose and intent of this agreement.

1. Plaintiff Bay City hereby dismisses with prejudice the above-named action against Blair, Jean Lambert, Frank Reed and Virgil D. Dardi, among other things, to enforce the transfer of 20,000 shares of stock held by it as collateral and which transfer has already been effected upon the placing up of a bond.

2. Blair dismisses with prejudice its counterclaim and cross-complaint against Bay City on all causes of action in the action above against said Bay City but reserves and retains as against Crofoot and Rice and Crofoot or Rice all rights and remedies which Blair would otherwise have against Bay City or which may be asserted against Crofoot and Rice or Crofoot or Rice through said Bay City, as agreed to be arbitrated.

3. Blair and Bay City hereby release the other of them and their respective directors, officers, employees, agents and attorneys from any and all claims of every kind and character and description arising out of or incidental to the aforesaid litigation and any litigation now being arbitrated as aforesaid and any transaction described in said litigation and the matters therein set forth excepting as herein specifically reserved and otherwise provided for.

4. Blair stipulates that an order may be entered discharging that certain bond in Action 383427 in the principal amount of \$50,000.00 put up under order dated February 8, 1949, as ordered by Honorable Milton T. Sapiro, Judge of the Superior Court, requiring Bay City to indemnify Blair in the event that Blair and others, as stated in said order, shall be damaged by reason of the transfer of said stock, upon the condition that E. J. Crofoot in the aforesaid litigation agrees to guarantee and to indemnify Blair and does hereby guarantee and indemnify Blair and save and hold harmless Blair, up to the extent of \$15,000.00, its officers, transfer agents and register agents against any loss, damages or expenses or other liability by reason of the recordation or the transfer or the issuance of new certificates of shares as required by said order, and further agrees to escrow forthwith 2,000 shares of Blair stock in the place and stead of said bond, being the said 2,000 shares of stock which Crofoot received from Bay City on sale of collateral to pay its loan to Crofoot of approximately \$35,000.00. Said 2,000 shares of stock shall be left in escrow in the possession of Dean Witter & Company, pending a written order releasing the same on order of Crofoot and Blair or the order or award of said arbitrator directing said release.

5. Nothing in this agreement or stipulation shall in any way alter or amend in any respect the terms or conditions of that written Arbitration Agreement between other parties hereinabove referred to

except as herein stated, and E. J. Crofoot and Blair each reserves the right to assert against the other all claims for costs and expenses incurred herein and to which Bay City or Blair may be entitled as a result of the action between these parties in this agreement and the Arbitrator shall award to Blair or Crofoot, respectively, such damages incurred by Blair or Bay City (through Crofoot) in their action against the other as may have been heretofore provided by said Arbitration Agreement, and Bay City shall be considered withdrawn from said arbitration.

In witness whereof, each of the parties hereto have signed their name this 19th day of May, 1950.

Parties to the Agreement:

BLAIR HOLDINGS  
CORPORATION,

By.....

BAY CITY BANK AND  
TRUST COMPANY,

By /s/ P. R. HOMILL,  
President.

I agree to Guarantee as Provided in Paragraph 4.

/s/ E. J. CROFOOT.

We, the undersigned, parties to the Arbitration Agreement dated March 6, 1950, hereby consent and agree that the Arbitration now being heard by Mr. George Osborne, pursuant to that written Ar-

bitration Agreement dated the 6th day of March, 1950, shall continue in any and all respects as between us, and the aforesaid mutual releases and stipulation herein contained, shall not affect, alter, modify or in any way change the terms and conditions of said Arbitration Agreement, except as provided above. We hereby consent and agree that said Arbitration shall continue in full force and effect.

BLAIR HOLDINGS  
CORPORATION,

New York City, New York,

By .....

BLAIR-ROLLINS & CO.,  
INCORPORATED,

Russ Building, San Francisco,

By .....

BLAIR & CO., INC., OF  
NEW YORK,

Russ Building, San Francisco,

By .....

BAY CITY BANK AND  
TRUST COMPANY,

c/o Phillip Barnett, Russ Bldg., San Francisco,  
California,

By /s/ P. R. HOMILL,  
Pres.;

/s/ E. J. CROFOOT,

/s/ PAUL RICE.

.....  
.....  
.....  
.....

Directors.

Approved by Counsel:

/s/ PHILLIP BARNETT.

.....  
KEESLING & KEESLING,  
HENRY L. CLAUSEN.



Two photostatic copies of the foregoing stipulation appeared in the original record. They are identical with the exception of the signatures. The foregoing printed signatures appeared on one copy. This is a photostat of the signatures appearing on the other copy.]

BLAIR HOLDINGS CORPORATION  
New York City, New York

By *[Signature]*

BLAIR-ROLLINS & CO., INCORPORATED  
Russ Building, San Francisco

By *J. M. Whitbeck*

BLAIR & CO., INC. OF NEW YORK  
Russ Building, San Francisco

By *J. M. Whitbeck*

RAY CITY BANK AND TRUST COMPANY  
c/o Phillip Barnett, Russ Bldg.,  
San Francisco, California

By

*W. J. Crofoot*

*Paul Rice*

DIRECTORS

Endorsed: Filed December 5, 1951.





[Title of District Court and Cause.]

DISCLAIMER

Comes now defendant Paul Rice and disclaims any right, title or interest in the subject matter set forth in plaintiff's complaint on file herein.

Dated: January 21, 1952.

/s/ PAUL H. RICE.

/s/ ROGER ANDERSON,

Attorney for Defendant Paul  
Rice.

[Endorsed]: Filed January 22, 1952.

---

[Title of District Court and Cause.]

ANSWER

Come now the defendants, Bay City Bank & Trust Company, a corporation, and Phillip Barnett, and answer the complaint on file herein as follows:

I.

These answering defendants having no information or belief upon the subjects mentioned in Paragraph I of plaintiff's complaint sufficient to enable them to answer any of the allegations therein contained, and placing their denial on that ground deny each and every allegation set forth in said Paragraph 1 except the allegations that the controversy is between citizens of different states and

that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$500.00.

## II.

These answering defendants having no information or belief upon the subjects mentioned in Paragraph 2 of plaintiff's complaint sufficient to enable them to answer any of the allegations therein contained, and placing their denial on that ground, deny each and every allegation set forth in said Paragraph 2, except the allegations that Bay City Bank & Trust Company is a Texas corporation and that Phillip Barnett is a resident of the City and County of San Francisco, State of California.

## III.

These answering defendants admit the allegations of Paragraph 3 of plaintiff's complaint and further state that on October 24, 1951, Phillip Barnett, attorney for E. J. Crofoot, signed a written order releasing said stock. That said stock was originally placed in escrow as part of a transaction which eliminated the Bay City Bank & Trust Company from an arbitration proceeding and streamlined the action down to the principals. That said stock was placed in escrow in lieu of a bond and to save the premium thereon. That when the arbitrator made his award, the purpose of said escrow ceased. That, however, the Arbitrator neglected to make any order in regard to said stock, and that Blair Holdings Corporation has arbitrarily refused to sign a release of said stock which release has been demanded by these defendants.

IV.

These answering defendants having no information or belief upon the subjects mentioned in Paragraph 4 of plaintiff's complaint sufficient to enable them to answer any of the allegations therein contained, and placing their denial on that ground, deny each and every allegation set forth in said Paragraph 4.

V.

These answering defendants admit the allegations of Paragraphs 5 and 6 of plaintiff's complaint.

VI.

These answering defendants having no information or belief upon the subjects mentioned in Paragraph 7 of plaintiffs' complaint sufficient to enable them to answer any of the allegations therein contained, and placing their denial on that ground, deny each and every allegation set forth in said Paragraph 7, and further state that 1600 of the said 2000 shares is part of a block of 20,000 shares held by Dean Witter in the name of Bay City Bank & Trust Company and subject to the direction of Phillip Barnett. Said 1600 shares are the property of Phillip Barnett, individually, and of Phillip Barnett as attorney for and on behalf of Bay City Bank & Trust Company, a corporation. That the interest and ownership of Phillip Barnett and Bay City Bank & Trust Company, a corporation, in said stock are the same and not in conflict. Neither Bay City Bank & Trust Company, a corporation, nor Phillip Barnett make any claim in or to the remaining 400 shares.

## VII.

These answering defendants having no information or belief upon the subjects mentioned in Paragraphs 8 and 9 of plaintiffs' complaint sufficient to enable them to answer any of the allegations therein contained, and placing their denial on that ground, deny each and every allegation set forth in said Paragraphs 8 and 9 except that the stock has a fair market value in excess of \$500.00.

Wherefore, these answering defendants pray as follows:

1. Defendants Bay City Bank & Trust Company, a corporation, and Phillip Barnett be decreed the owners in fee of 1600 shares of said stock;

2. That said 1600 shares be released to Bay City Bank & Trust Company, a corporation, and Phillip Barnett.

3. Defendant Bay City Bank & Trust Company, a corporation, and Phillip Barnett be released from all further liability on account of said stock and on account of said escrow instructions.

4. Such other relief be awarded by this Court as may be proper in the premises.

/s/ PHILLIP BARNETT.

/s/ RODNEY H. ROBERTSON,  
Attorney for Defendants, Bay City Bank & Trust  
Company, a Corporation, and Phillip Barnett.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed January 25, 1952.

[Title of District Court and Cause.]

## ANSWER

Comes now the defendant E. J. Crofoot and answers the complaint on file herein as follows:

### I.

This answering defendant having no information or belief upon the subjects mentioned in Paragraphs I, III, IV, V, VI, VIII and IX of plaintiffs' complaint sufficient to enable him to answer any of the allegations therein contained, and placing his denial on that ground denies each and every allegation set forth in said Paragraphs I, III, IV, V, VI, VIII and IX.

### II.

This answering defendant having no information or belief upon the subjects mentioned in Paragraph II of plaintiffs' complaint sufficient to enable him to answer any of the allegations therein contained, and placing his denial on that ground, denies each and every allegation set forth in said Paragraph II, except the allegation that E. J. Crofoot is a resident of the City of Sacramento, State of California.

### III.

This answering defendant having no information or belief upon the subjects mentioned in Paragraph VII of plaintiffs' complaint sufficient to enable him to answer any of the allegations therein contained, and placing his denial on that ground, denies each and every allegation set forth in said Paragraph



VII, and defendant E. J. Crofoot further states that he claims no right, title or interest in or to any of said 2,000 shares of Blair Holdings Corporation stock presently held by Dean Witter & Co. for the account of Bay City Bank and Trust Company, and that a letter to this effect was addressed to plaintiff on November 27, 1951.

Wherefore defendant E. J. Crofoot prays as follows that:

1. All proceedings in the above-entitled action be abated and that he recover his costs herein.
2. He be released from all liability on account of said stock and on account of said escrow instructions.
3. Such other relief be awarded by this Court as may be proper in the premises.

/s/ PHILLIP BARNETT,  
Attorney for E. J. Crofoot.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed January 25, 1952.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS BLAIR HOLDINGS CORPORATION, A CORPORATION; BLAIR-ROLLINS & CO., INC., A CORPORATION; BLAIR & CO., INC., OF NEW YORK, A CORPORATION, AND VIRGIL D. DARDI

Defendants Blair Holdings Corporation, a corporation; Blair-Rollins & Co., Inc., a corporation; Blair & Co., Inc., of New York, a corporation, and Virgil D. Dardi, answer the complaint on file herein as follows:

I.

These answering defendants have no information or belief upon the subjects mentioned in paragraph I of plaintiffs' complaint sufficient to enable them to answer the allegations contained therein, and placing their denial upon that ground, deny all the allegations set forth in said paragraph, except the allegation that the controversy is between citizens of different states, and that the matter in controversy exceeds, exclusive of interest and costs, the sum of \$500.00.

II.

Admit the allegations of paragraphs II, III and IV, and allege that in the arbitration proceedings referred to therein, the arbitrator, Professor George E. Osborne of Stanford University, made an award which was thereafter corrected and confirmed by the Superior Court of the State of California, in and for the City and County of San Francisco, a copy of which

said Order is attached as Exhibit "B" to Plaintiffs' Memorandum of Points and Authorities in Opposition to Motion to Dismiss herein, and is thus referred to and incorporated herein, and thereafter there was entered in the said Superior Court of the State of California, a judgment on said corrected award of arbitrator, a copy of which is attached to said Memorandum of Points and Authorities as Exhibit "A," and thereby referred to and made a part thereof, and thereafter on or about September 11, 1951, the said Blair Holdings Corporation, a corporation, caused a writ of execution on said judgment to issue, a copy of which is attached hereto, and made a part hereof, and the Sheriff of the said City and County of San Francisco, State of California, duly served and levied upon plaintiffs and upon the said stock referred to in plaintiffs' complaint comprising said 2,000 shares of Blair Holdings Corporation, a corporation, and upon said Blair Holdings Corporation, a corporation, the said writ of execution and notice of levy in the said consolidated actions which have theretofore been arbitrated.

### III

These answering defendants have no information or belief on the subjects mentioned in paragraphs V and VI of plaintiffs' complaint sufficient to enable them to answer any of the allegations contained therein, and placing their denial upon that ground, deny all the allegations set forth in said paragraphs. Said defendants further allege that neither defendants Bay City Bank & Trust Co., a corporation, nor Phillip Barnett, nor Virgil D. Dardi, nor any person



or firm other than Blair Holdings Corporation, a corporation, are the owners of or entitled to possession of the said 2,000 shares of said stock.

#### IV

These answering defendants have no information or belief on the subjects mentioned in paragraphs VII, VIII and IX sufficient to enable them to answer any of the allegations contained therein and placing their denial upon that ground, deny all the allegations set forth in said paragraphs, except that defendant Blair Holdings Corporation, a corporation, is the owner and entitled to possession of said 2,000 shares of stock, and all right, title and interest in and to said stock, which has a fair market value in excess of \$500.00, and that said ownership and right to possession thereof by said Blair Holdings Corporation, a corporation, is based among other things upon (1) Exhibit "A" to plaintiffs' complaint, being a letter of instructions to plaintiffs of May 26, 1950, and the stipulation of the parties; (2) the award of said arbitrator in favor of said Blair Holdings Corporation, a corporation; (3) the order correcting and confirming the said award of the arbitrator; (4) the judgment of the corrected award of arbitrator, and (5) the execution caused to be levied by Blair Holdings Corporation, a corporation, on said judgment; and for each of said reasons.

Wherefore, defendants Blair-Rollins & Co., Inc., a corporation; Blair & Co., Inc., of New York, a corporation, and Virgil D. Dardi pray that they be hence dismissed from this action with their costs, and

that defendant Blair Holdings Corporation, a corporation, be decreed the owner in fee of said 2,000 shares of said stock, and entitled to the possession of the certificates therefor, and the holder of a lien thereon by virtue of said levy of execution, and for such other and further relief as may be meet and proper in the premises.

KEESLING & KEESLING,

HENRY C. CLAUSEN,

/s/ HENRY C. CLAUSEN,

Attorneys for Said Answering  
Defendants.

Duly verified.

In the Superior Court of the State of California, in  
and for the City and County of San Francisco

No. 386971

E. J. CROFOOT,

Plaintiff,

vs.

VIRGIL DARDI, etc., et al.,

Defendants.

No. 383427

BAY CITY BANK AND TRUST COMPANY, a  
Corporation,

Plaintiff and Cross-Defendant,

vs.

BLAIR HOLDINGS CORPORATION, a Corpora-  
tion,

Defendant, Cross-Complainant  
and Cross-Defendant;

JEAN LAMBERT, etc., et al.,

Defendants;

PAUL RICE, etc., et al.,

Cross-Defendants;

E. J. CROFOOT,

Cross-Complainant.

No. 382342

PAUL RICE,

Plaintiff.

vs.

BLAIR HOLDING CO., etc., et al.,

Defendants.

No. 383091

PAUL RICE,

Plaintiff,

vs.

BLAIR HOLDINGS CORPORATION, etc., et al.,

Defendants.

Supreme Court of the State of New York,  
County of New York

Index No. 13-1949

BLAIR HOLDINGS CORPORATION,

Plaintiff,

against

E. J. CROFOOT,

Defendant.

Index No. 78-1949

E. J. CROFOOT,

Plaintiff,

against

L. MARIO GIANNINI, etc., et al.,

Defendants.

EXECUTION

In the Superior Court of the State of California, in  
and for the City and County of San Francisco

No. ....

.....

Plaintiff,

vs.

.....

Defendant.

The People of the State of California, to the Sheriff  
of the City and County of San Francisco, Greet-  
ing:

Whereas, on the 5th day of July, A. D. 1951, a judg-  
ment was rendered by the above-entitled court in the  
above-entitled action in favor of Blair Holdings Cor-  
poration, as judgment creditor, and against E. J. Cro-  
foot, as judgment debtor, and said judgment was duly  
entered in Volume 892, page 6, for the sum of

\$174,421.42, principal,

\$.....attorney fees,

\$.....interest, and

\$.....costs, making a total amount of the  
judgment as

\$.....entered, and

Whereas, according to a cost bill after judgment  
filed herein, it appears that further sums have ac-  
crued since the entry of judgment, to wit:

\$.....accrued interest, and

\$.....accrued costs, making a total of

\$.....due on said judgment before deductions,

on which total amount credit must be given for payments and partial satisfactions in the amount of

\$105.15, leaving a net balance of

\$174,316.27 actually due on said judgment on the date of the issuance of this execution, to which must be added the costs and commissions of the officer executing this writ.

.....

These Presents Are Therefore to Command You to satisfy the said judgment with interest and costs as provided by law and your costs and disbursements out of the personal property of said debtor, and if sufficient personal property can not be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the abstract of judgment was filed as provided in Section 674 of this code, or at any time thereafter, and make return of this writ within 60 days after your receipt thereof, with what you have done endorsed hereon.

Given under my hand and the Seal of the Superior Court of the State of California, in and for the City and County of San Francisco.

Dated September 11, 1951.

[Seal]                      MARTIN MONGAN.  
                                    Clerk.

By J. FITZPATRICK,  
                                Deputy Clerk.

Receipt of copy acknowledged.

[Endorsed]: Filed May 22, 1952.

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[Title of District Court and Cause.]

No. 31082

### ORDER FOR ENTRY OF JUDGMENT

It Is Ordered that judgment be entered herein upon findings of fact and conclusions of law in favor of Bay City Bank & Trust Company and Phillip Barnett, and against Blair Holdings Corporation, et al., declaring Bay City Bank & Trust Company to be owners in fee of the 1600 shares of stock, and releasing the said shares to Bay City Bank & Trust Company and Phillip Barnett.

The respective parties to pay their own costs.

Dated: July 13th, 1954.

/s/ MICHAEL J. ROCHE,  
                                U. S. District Court Judge.

[Endorsed]: Filed July 13, 1954.



[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 9th day of June, 1954, before the Court sitting without a jury, Rodney H. Robertson, Esq., having appeared as counsel for the defendants Bay City Bank & Trust Company and Phillip Barnett, and Henry C. Clausen, Esq., having appeared as counsel for the defendants Blair Holdings Corporation, Blair-Rollins & Co., Incorporated, and Blair & Co., Inc., and the defendant, E. J. Crofoot, having appeared by his Answer filed on January 25, 1952, and disclaimed any interest in and to the stock which is the subject matter of this action, and the defendant, Virgil Dardi, having appeared by Answer filed May 22, 1952, and did thereby deny any interest in and to the said stock which is the subject matter of this suit, and the defendant, Paul Rice, having failed to appear herein, and this Court having heretofore entered its Judgment of Interpleader on or about the 15th day of January, 1953, whereby the said 2,000 shares of stock were deposited into Court by plaintiffs and whereby plaintiffs were awarded \$500.00 attorney's fee and \$62.00 costs which said attorney's fee and costs were charged as a lien upon said stock certificates so deposited in Court and which lien is to be discharged by the prevailing party, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the cause having been submitted to the Court for



decision, and the Court being fully advised in the premises, now makes its findings of fact as follows:

### Findings of Fact

1. That on or about May 26, 1950, 2000 shares of Blair Holdings Corporation stock were escrowed with the plaintiffs pursuant to a letter dated May 26, 1950, and stipulation dated May 19, 1950, which documents are attached to plaintiffs' complaint and marked Exhibit "A."

2. That the said 2,000 shares of stock were deposited in Court by plaintiffs on or about January 15, 1953, pursuant to a Judgment of Interpleader and attorney fees and costs are provided to be paid to plaintiffs and a lien is charged upon said stock which must be satisfied by the prevailing party upon determination of the suit.

3. That of the 2,000 shares of stock so deposited in Court, 400 shares are represented by Certificates Numbers SH 10652, S 13739, N 3931 and NH 1736, each of said certificates being for 100 shares and 1600 shares are represented by certificates numbers 6201 to 6216 in the amount of 100 shares each.

4. That defendants Bay City Bank and Trust Company, hereinafter called Bay City Bank, Philip Barnett and Virgil Dardi disclaim any right, title and interest in and to the said 400 shares represented by certificates numbers SH 10652, S 13739, N 3931 and NH 1736. The Court finds that

it is a fact that said 400 shares are the property of Blair Holdings Corporation.

5. That the aforesaid 1600 shares of stock, bearing certificates numbers 6201 to 6216 are executed in the "street name" of Dean Witter & Co., and held by said company for the account of Bay City Bank, subject to the order of Phillip Barnett.

6. That on or about March 15, 1949, the Bay City Bank, through its attorney, Phillip Barnett, deposited 20,000 shares of Blair Holdings Corporation Stock, standing in the name of Bay City Bank, with Dean Witter & Co. That from and after March 15, 1949, to on or about May, 1950, defendant Phillip Barnett ordered the sales of 18,400 shares of said stock and the proceeds from those sales of said stock were delivered to Bay City Bank. There remained in Dean Witter & Co., for the account of Bay City Bank, some 1600 shares unsold and subject to the order of Phillip Barnett.

7. During the period 1949 to 1953, certain litigation was pending among the parties defendant. That litigation was reduced to arbitration proceedings had before George Osborne, Arbitrator, during the period April, May and June, 1950. In one of these actions, the defendant, Bay City Bank, was required to post a conversion surety bond in order to secure the transfer of certain stock. The premium on this bond was in excess of \$1,000 annually. In May, 1950, during the aforesaid arbitration proceedings, and for the purpose of effecting

a savings on the said surety bond premium, the parties created the escrow described in the letter and stipulations attached to the complaint and marked Exhibit "A." Pursuant to said escrow, 2,000 shares of Blair stock was to be placed with Dean Witter & Co., in lieu of the surety bond and that upon termination of the then pending litigation, the said stock was to be released either by the joint order of the parties or by award of the arbitrator.

8. That Bay City Bank and Phillip Barnett permitted the aforesaid 1600 shares (which was being held for their account and order at Dean Witter & Co.) to remain on deposit with Dean Witter to serve in lieu of the conversion bond above mentioned. That Virgil Dardi and/or Blair Holdings Corp. deposited 400 shares of stock with Dean Witter in order that there would be 2,000 shares on deposit. That neither Bay City Bank nor Phillip Barnett executed any assignment endorsement or other instrument for the purpose of transferring title to said 1600 shares of stock, and it was not intended by Bay City Bank, Phillip Barnett nor the Blair Parties that title to said stock should be transferred at the time said stock was escrowed.

9. That the Arbitrator did not, in his award, dispose of or otherwise release said 2,000 shares of stock held by Dean Witter. That Bay City Bank, by and through its attorney, Phillip Barnett, sought to secure the release of its 1600 shares of stock on several occasions, following entry of the

Arbitrator's award. Blair Holdings Corporation refused, however, to execute a joint order for the release of said stock.

10. It is a fact that from March 5, 1949 (the date Bay City Bank acquired title to the 20,000 shares of Blair stock as hereinabove stated), to the present time, title to the said 1600 shares of stock on deposit with Dean Witter & Co. has never been transferred by Bay City Bank or Phillip Barnett and that the said Dean Witter & Co. held said 1600 shares of stock at all times for the account of Bay City Bank.

From the foregoing facts, the Court concludes

#### Conclusions of Law

1. That Bay City Bank and Trust Company is the owner in fee of 1600 shares of Blair Holdings Corporation stock deposited in Court by plaintiffs pursuant to Judgment of Interpleader entered January 15, 1953.

2. That the aforesaid 1600 shares of stock should be released to Bay City Bank and Trust Company and its attorney, Phillip Barnett.

3. That the said Bay City Bank and Phillip Barnett pay to plaintiffs the sum of \$449.60, being 80% of the attorney's fee and costs awarded plaintiffs by the said Judgment of Interpleader.

4. That the Blair Parties hereto, as more specifically designated hereinabove, are the owners in

fee of 400 shares of Blair Holdings Corporation stock deposited in Court by plaintiffs pursuant to Judgment of Interpleader entered January 15, 1953.

5. That the said Blair Parties pay to plaintiffs the sum of \$112.40, being 20% of the attorney's fee and costs awarded plaintiffs by the said Judgment of Interpleader.

6. Other than as above indicated, the respective parties are to pay their own costs.

Let Judgment be entered accordingly.

Dated this 26th day of August, 1954.

/s/ MICHAEL J. ROCHE,

Judge of the U. S. District  
Court.

Lodged July 26, 1954.

[Endorsed]: Filed August 25, 1954.



In the District Court of the United States, for  
the Northern District of California, Southern  
Division

No. 31082

DEAN WITTER, et al.,

Plaintiffs,

vs.

BLAIR HOLDINGS CORPORATION, a Corpora-  
tion; BLAIR-ROLLINS & CO., INCORPO-  
RATED, a Corporation; BLAIR & CO., INC.,  
OF NEW YORK, a Corporation; BAY CITY  
BANK & TRUST CO., a Corporation; VIRGIL  
D. DARDI, PAUL RICE, E. J. CROFOOT,  
PHILLIP BARNETT,

Defendants.

### JUDGMENT

The above-entitled cause came on regularly for trial on the 9th day of June, 1954, before the Honorable Michael J. Roche, United States District Judge, sitting without a jury, Rodney H. Robertson, Esq., having appeared as counsel for the defendants Bay City Bank & Trust Company and Phillip Barnett, and Henry C. Clausen, Esq., having appeared as counsel for defendants, Blair Holdings Corporation, Blair-Rollins & Co., Incorporated, and Blair & Co., Inc., and the defendant E. J. Crofoot having appeared by his answer filed herein on or about January 25, 1952, and having thereby disclaimed any interest in and to the stock which is the subject matter of this action, and the defendant



Virgil Dardi, having appeared by his answer filed on or about May 22, 1952, and did thereby deny any interest in and to said stock which is the subject matter of this suit, and the defendant, Paul Rice, having failed to appear herein, and this Court having heretofore entered its Judgment of Interpleader on or about the 15th day of January, 1953, whereby the said 2,000 shares of stock were deposited into Court by plaintiffs, and the Court having heard the testimony and having examined the proofs offered by the respective defendants hereto, and the cause having been submitted to the Court for decision, and the Court being fully advised in the premises, and having signed its written findings of fact and conclusions of law.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That the Bay City Bank and Trust Company is hereby declared to be the owner in fee of 1600 shares of Blair Holdings Corporation stock now on deposit in the above-entitled Court pursuant to that certain decree of Interpleader entered by the above-entitled Court on or about January 15, 1953, and that the said 1600 shares of stock be and the same shall be released to the Bay City Bank and Trust Company and to its attorney, Phillip Barnett, upon but not until payment to plaintiff of the sum specified in paragraph 2 below.

2. That the said Bay City Bank and Trust Company or Phillip Barnett pay to plaintiffs the sum of \$449.60, being 80% of the attorney's fee and

costs awarded plaintiffs by the aforesaid Judgment of Interpleader.

3. That Blair Holdings Corporation be and it is hereby adjudged the owner in fee of 400 shares of Blair Holdings Corporation stock deposited in the above-entitled Court by plaintiffs pursuant to Judgment of Interpleader entered in the above-entitled action on or about January 15, 1953, and that the aforesaid 400 shares of stock be, and the same shall be released to the said Blair Holdings Corporation upon but not until payment to plaintiff of the sum specified in paragraph 4 below.

4. That the said Blair Holdings Corporation pay to the plaintiffs herein the sum of \$112.40, being 20% of the attorney's fee and costs awarded plaintiffs by the said Judgment of Interpleader.

5. That except as hereinabove specified, each of the parties hereto are to pay and bear their own costs of suit incurred herein.

Dated this 25th day of July, 1954.

/s/ MICHAEL J. ROCHE,

Judge of the U. S. District  
Court.

Lodged July 26, 1954.

[Endorsed]: Filed August 25, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT  
COURT OF APPEALS

Notice Is Hereby Given that Blair Holdings Corporation, a corporation; Blair-Rollins & Co., Incorporated, a corporation, and Blair & Co., Inc., of New York, a corporation, defendants in the above-entitled action, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the judgment entered in this action on the 26th day of August, 1954.

Dated: September 3, 1954.

/s/ MARSHALL E. LEAHY,

/s/ JOHN F. O'DEA,

Attorneys for Appellants.

[Endorsed]: Filed September 8, 1954.

The United States District Court, Northern  
District of California, Southern Division

No. 31082

DEAN WITTER, et. al.,

Plaintiffs,

vs.

BLAIR HOLDINGS CORPORATION, a Corpo-  
ration, et al.,

Defendants.

PROCEEDINGS

Wednesday, June 9, 1954

Appearances:

For Defendants, Blair Holdings Corporation, et al.,  
and Virgil D. Dardi:

KEESLING & KEESLING, and  
HENRY C. CLAUSEN, by  
HENRY C. CLAUSEN, ESQ.

For Defendants, Bay City Bank & Trust Company,  
and Phillip Barnett:

PHILLIP BARNETT, by  
RODNEY H. ROBERTSON, ESQ.

\* \* \*

WILLIAM B. DOYLE

was called as a witness by defendant Blair Holdings Corporation, who being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as hereinafter indicated:

The Court: Your full name, please?

A. William B. Doyle.

Q. What is your business or occupation?

A. I am office manager of Dean Witter and Company in San Francisco.

Q. How long have you been so engaged?

A. For 14 years.

Q. What is the nature of your work, supervising?

A. Supervising the accounting and such departments, yes.

Direct Examination

By Mr. Clausen:

Q. Mr. Doyle, I show you what purports to be a letter from the two attorneys, Phillip Barnett and myself, Henry C. Clausen, dated May 26, 1950, directed to Dean Witter and Company.

A. May 26. [15\*]

Q. Yes, and would you see whether, from your own files, you have the original of that, please?

A. I have that letter, yes.

Mr. Clausen: May the record show that the witness hands me the original of the letter, dated May

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of William B. Doyle.)

26, and I will introduce, Your Honor, this in evidence as the Blair Exhibit No. 1. [16]

The Court: The letter will be admitted and marked. Got a copy?

Mr. Robertson: I might say, Your Honor, that letter is attached as an exhibit in Plaintiff's complaint in interpleader.

The Court: Very well.

Mr. Robertson: Following is the stipulation.

The Clerk: Defendant's Exhibit 1-B admitted and filed in evidence.

(Whereupon letter referred to and identified above was received in evidence and marked Defendant's Exhibit 1-B.) [17]

\* \* \*

Q. (By Mr. Clausen): Mr. Doyle, do you have the stipulation referred to in this letter, the stipulation being dated May 19, 1950?

A. I do not, no.

Q. I will show you, Mr. Doyle, and ask you if you can tell us—

All right, we may be able to stipulate to some of this. I will introduce that in evidence, Your Honor. [18]

I have photostatic copies here of the originals, and the reason there are two, your Honor, is because one was signed by some of the parties and one was signed by the other, but I will put the two in as one exhibit.

Mr. Robertson: Those are the stipulations, Coun-



(Testimony of William B. Doyle.)

sel, which are submitted on May 26, 1950. I will stipulate that they were delivered to Dean Witter at the time this escrow was obtained.

Mr. Clausen: Thank you.

The Court: The record will so show.

The Clerk: 2-B admitted and filed in evidence.

(Whereupon photostatic copies of stipulations referred to and more particularly identified above were received and marked in evidence as Defendant's Exhibit 2-B.) [19]

\* \* \*

Mr. Robertson: You stipulate, Counsel, that agreement—stipulation was entered into while the Arbitration proceedings was commencing here in San Francisco?

Mr. Clausen: It was during the course of the Arbitration [23] as I stated this morning to Judge Roche.

Mr. Robertson: Yes.

Q. (By Mr. Clausen): Mr. Doyle, I show you an original——

Mr. Robertson: Stipulate to that.

Q. (By Mr. Clausen): I show you an original letter, Mr. Doyle, of May 26, 1950, from Dean Witter & Co. to Mr. Phillip Barnett and Mr. Henry C. Clausen, signed apparently by a general partner, G. D. Cronin, ask you do you recognize the signature there?

Mr. Robertson: Stipulate we received such a letter.

(Testimony of William B. Doyle.)

The Clerk: Defendant's Exhibit 4-B admitted and filed in evidence.

(Whereupon Stock Certificates referred to and more particularly described above were received in evidence and marked Defendant's Exhibit 4-B.)

Mr. Robertson: I have no objection to that. I will stipulate.

Q. (By Mr. Clausen): Mr. Doyle, just for the record, on the 11th day of September, 1951, did you have a Louis J. Stack, a Mr. Stack employed in your firm?

A. He was so employed at that time, that is correct.

Q. Is that his signature?

A. That is his signature, yes.

Mr. Clausen: We will introduce this in evidence, if the Court please, as one of the links on the execution phase. It is an answer to the garnishment and execution that was levied September 11, 1951.

The Court: Be admitted and marked next in order.

The Clerk: Defendant's Exhibit 5-B admitted and filed in evidence.

(Whereupon document entitled Answer [27] to Garnishment, referred to above, was received in evidence and marked Defendant's Exhibit No. 5-B.)

Mr. Robertson: That is the execution form, writ

(Testimony of William B. Doyle.)

of execution by Dean Witter, showing no account of E. J. Crofoot with them. Is that the one? What is that language at the bottom there? "No record of account."

The Court: Indicate for the record what this document is so there is no question about it.

Mr. Clausen: The document itself, your Honor, states on there, it is a Sheriff's Writ by Dean Witter, and states on there "no record of account," and it is signed by Dean Witter and Company by this man, Stack.

The Court: Very well.

Mr. Clausen: You may take the witness.

### Cross-Examination

By Mr. Robertson:

Q. Mr. Doyle, do your records which you have with you indicate that you have an account number there, No. 5000 20256 1-32?

A. Yes, we—we would have such an account on our books.

Q. And what was the subject matter of that account?

A. It was opened for the Bay City Bank and Trust Company for the purpose of selling Blair stock, Blair Holdings Corporation stock. [28]

Q. I will show you a non-negotiable issue due bill, under the heading of Dean Witter and Company, S.F. 8987, stating, account No. 5000 20256, and ask you what that document is, please?

Mr. Clausen: We object to that, your Honor,

(Testimony of William B. Doyle.)

Q. On what date was that received?

A. The date is May 26, 1950.

Q. And would you read, please, the source of that stock?

A. The stock—there is one hundred shares in the name of Charles Markes, two hundred shares in the name of Schwabacher and Company, 100 shares in the name of Gordon Graves and Company, all properly endorsed.

Q. And do you have any other receipts in your files showing receipts of any additional Blair Holdings Company stock on May 26, 1950, other than these four hundred shares?

A. Apparently, we do not.

Mr. Robertson: I will offer this Dean Witter receipt, SF 31942, as Barnett's Exhibit next in order.

The Court: Be admitted next in order.

The Clerk: Defendant's Exhibit B admitted and filed in [31] evidence.

(Whereupon Dean Witter Receipt, SF 31942, referred to and more particularly described above, was received in evidence and marked Defendant's Exhibit B.)

Q. (By Mr. Robertson): Mr. Doyle, do you have the balance of your records available now that were sent for? A. Yes.

Q. And I will show you what purports to be a ledger sheet of Dean Witter and Company under date of April 1, 1949, and specifying certain sales of Blair Holdings Corporation stock in which there

(Testimony of William B. Doyle.)

appears Account No. 5000 20256 1-32, and ask you what that is, please?

A. This is a photostatic copy of the Customer Ledger Sheet for Account 5000 covering the period from March 10, 1949, through March 16, 1949, and then an additional photostat of a dividend payment on two thousand shares of stock, Blair Holdings stock on February 15, 1950.

Q. Yes. And does that account number—whose account number is that?

A. The account number 5000, Bay City Bank.

Q. And that ledger sheet shows certain sales?

A. It shows sales totaling eighteen thousand shares of Blair Holdings stock, and a subsequent check payment on the balance of the eighteen thousand shares amounting to \$35,239.96. [32]

Mr. Robertson: The defendant Barnett will offer this as his next exhibit in order, your Honor.

Mr. Clausen: Your Honor, to that we will object, and so that our position is clear in respect of the objection, your Honor, it is this, not as my adversary stated our position is, not that we rest our case upon any execution at all. We rest our case on the execution in part; we rest primarily upon the very words in the stipulation, and our position is that the sixteen hundred or the four hundred or the source makes no difference, because by the written document signed by the parties, it is here stated that Crofoot agrees to escrow forthwith, two thousand shares of Blair stock in the place and stead of said bond, and then, being the said two thousand



(Testimony of William B. Doyle.)

shares of stock which Crofoot received from Bay City on sale of collateral to pay its loan to Crofoot of approximately \$35,000. And, therefore, our position is that since the Bay City signs this very paper and since Barnett signs the very paper, that it now disavows these words and say that Crofoot did not have two thousand shares of stock so far as Blair is concerned. That is our position, your Honor.

Mr. Robertson: That language, your Honor, does not necessarily mean that the title to said stock is in Crofoot, nor does it necessarily mean—it wasn't put into that escrow by Crofoot, it was already there, and we are putting this evidence in to trace the actual title to that stock through [33] Bay City Bank and Mr. Barnett and to explain any such language of that stipulation.

I asked Counsel if he would stipulate that the two thousand shares that was referred to in that stipulation were part and parcel of the sixteen hundred shares of the Bay City stock which was in escrow. Now, it is our contention, your Honor, that the original twenty thousand shares that were put in by Bay City always remained in their name and title, that it was sold down to the balance of sixteen hundred shares. This settlement proposition with respect to Bay City was suggested; a stipulation was drawn up and in lieu of this cash bond, these two thousand shares were escrowed. Now, the fact that they were escrowed pursuant to this agreement does not affect the title to the stock, and we are here disputing a question of the issue of title of that



(Testimony of William B. Doyle.)

stock. Blair claims they own the stock, we claim we own it. Now, that stock was substituted in escrow in lieu of this large cash bond that was costing \$1,000 a year. If the evidence develops, which it will, that that stock was loaned to Crofoot—if, for example, I was to put up my own real property bond to support an attachment of a third party, that doesn't necessarily mean the property I put up is the property of some third party, it is still my property. It so happened in this case, your Honor, that the Court found the Bay City stock and Crofoot stock was converted and there was no necessity for a further bond or for anything substituted [34] in lieu of a bond. Therefore, Blair was not damaged, they had no right to go after this bond or security in lieu of the bond.

The fact that the stipulation states that Crofoot will put up such and such can be controverted by the evidence to prove that what was already there was merely serving as security or a cash bond, and the title to that property is still in Bay City Bank and always has been, and Mr. Barnett. And that title to that stock is the issue here in dispute. Blair claims that all this stock——

The Court: I may ask you, Gentlemen, now what is before the Court?

Mr. Clausen: The objection, your Honor; what is before the Court, your Honor, is that he was offering, Counsel was offering in evidence this ledger sheet.

(Testimony of William B. Doyle.)

The Court: Indicate for the purpose of the record the purpose of this offer.

Mr. Robertson: The purpose of this offer, your Honor, is again to support the question of title to this stock.

The Court: For that limited purpose I will allow it in subject to your motion and over your objection.

Mr. Clausen: Your Honor, so I won't keep interrupting, because I see the witness has a sheaf of papers, may my objection, your Honor, as I stated, that it is irrelevant and immaterial to the issues, plus the fact, your Honor, it would be an attempt to violate and vary the terms of this written [35] instrument even to the point of constituting fraud on Blair, and I would ask your Honor if my objection on that phase would run to this line.

The Court: I wouldn't make that ruling, give you a better ruling. I will allow it subject to your motion to strike and over your objection.

Mr. Robertson: Thank you, your Honor.

The Court: So you will have a record on it.

The Clerk: Defendant's Exhibit C admitted and filed in evidence.

(Whereupon Ledger Sheet referred to and more particularly described at Page 32 of this record was received in evidence and marked Defendant's Exhibit C.)

Mr. Clausen: And I just wanted, your Honor, just one word more, if I may.

(Testimony of William B. Doyle.)

The Court: I will give you time to argue the case after you marshal your facts.

Mr. Clausen: All right, your Honor.

Q. (By Mr. Robertson): Mr. Doyle, your records indicate sixteen hundred shares of stock was a balance remaining from the original twenty thousand shares deposited with—made by Wells Fargo on behalf of Bay City Bank and Trust Company?

A. Our records show there were two thousand shares left in the account of the twenty thousand originally deposited with us. [36]

Q. Your records also indicate that four hundred shares was deposited in this particular escrow that was opened on May 26, 1950?

A. Yes, four hundred shares were received. I don't have a copy of it, but I have seen the receipt.

Q. Mr. Doyle, can you state that the sales, as demonstrated on this ledger sheet, Defendant Barnett's Exhibit C, were made during the period of March, 1949? A. That is correct.

Q. Do you know from your own knowledge who ordered the sales?

A. Mr. Phillip Barnett ordered the sales.

Q. And do you know where the proceeds of those sales were delivered?

A. The proceeds were delivered to the Wells Fargo Bank and Union Trust Company for the account of Bay City Bank and Trust Company.

Mr. Robertson: No further questions, Mr. Doyle, your Honor.

(Testimony of William B. Doyle.)

Mr. Clausen: Just one more, Mr. Doyle, please.

### Redirect Examination

By Mr. Clausen:

Q. In answer to Counsel's question, Mr. Doyle, the statement was made that there had been a four hundred share sale recently. Now——

Mr. Robertson: Just a minute, I did not say recently, I [37] said at some time during the period March of 1949 to May 26, 1950, if a four hundred share sale was made.

Q. (By Mr. Clausen): Mr. Doyle, let me ask the question: Have any sales been made of the two thousand shares of stock represented here by these certificates, Defendant's Exhibit 4-B, being the two thousand shares referred to in the Dean Witter letter of May 26, 1950? Have any sales been made of that stock since that stock was deposited with you, Dean Witter and Company?

A. No sales have been made of these particular shares.

Q. When the four hundred share sale was made that you answered in respect to Mr. Robertson's question, that had nothing to do, did it, with the two thousand shares that are here in Court?

Mr. Robertson: We will stipulate it does not, Counsel.

Mr. Clausen: That is all.

Your Honor, please, may this witness be excused?

Mr. Robertson: We have no further need of him.

(Testimony of William B. Doyle.)

Mr. Clausen: I have no further questions at this time.

The Court: You wished to be excused?

The Witness: Very much. Thank you.

(Witness excused.)

The Court: Take a recess.

(Short recess.)

Mr. Robertson: May it please the Court, there was one [38] letter in the Dean Witter Company files which we neglected to have the witness, Doyle, identify, and perhaps, rather than recalling the witness, Counsel might be able to stipulate that was sent to Dean Witter. I have here a copy of the letter prepared by Counsel, Pillsbury, Madison and Sutro, Counsel for the plaintiff, which he sent, the letter from the Bay City Bank and Trust Company to Dean Witter. [38-A]

Mr. Clausen: Well, I would object to this under any circumstances, your Honor. It is apparently an opinion by the Bay City Bank as to one of the points that are now in issue before your Honor, hearsay. So far as the foundation is concerned, I would be very willing to consider, your Honor, that part of it, but even at that it is just a typewritten letter, it isn't a carbon, but it purports to be a letter from the Bay City Bank to Dean Witter stating that the 20,000 shares were assigned as collateral on an indebtedness and matters of that kind, which I would object to.



The Court: Is that the fact?

Mr. Clausen: I don't know, your Honor.

Mr. Robertson: That is the fact, your Honor.

Mr. Clausen: I don't know.

Mr. Robertson: The fact was, your Honor, that in 1951 Dean Witter wrote to all parties concerned, Blair, Mr. Barnett, Bay City Bank and Trust Company, and Crofoot, and asked them to state what their interest was in this stock, and this is a letter from the Bay City Bank to Dean Witter replying to Dean Witter's request, which letter was written before the institution of this suit.

The Court: Waive the foundation; I will allow it subject to your motion to strike and over your objections, so you will have a record.

Mr. Clausen: All right, your Honor. [39]

The Court: You may read it.

Mr. Robertson: Thank you, your Honor. The letter is a copy:

"Bay City Bank and Trust Co., Bay City, Texas

"November 14, 1951.

"Dean Witter and Company,

"45 Montgomery Street,

"San Francisco 6, Cal.

"Gentlemen:

"Referring to your letter of October 29th, please be advised 20,000 shares of Blair Holdings Corporation stock which were deposited with you by Mr. Phillip Barnett for our account, and on which there are presently outstanding 1,600 shares remaining,



were assigned to us as collateral for indebtedness of E. J. Crofoot, plus costs and ten per cent attorney fees, if necessary to employ an attorney in the collection thereof.

“Mr. Phillip Barnett is our San Francisco counsel and the matter has been placed in his hands. Please contact him for further information.

“/s/ P. R. HAMILL,  
“President.”

Mr. Clausen: On my motion to strike, your Honor, I will reserve all objections except the foundation.

The Clerk: Defendant's Exhibit D in evidence.

(Whereupon letter referred to above was received in evidence and marked Defendants' Exhibit D.) [40]

Mr. Clausen: Call Mr. Dunn.

HOWARD E. DUNN

was called as a witness by the defendant, Blair, who, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as hereinafter indicated:

The Court: Your full name, please?

A. Howard E. Dunn.

Q. Your business or occupation?

A. With the Sheriff of the City and County of San Francisco, Chief Deputy.

(Testimony of Howard E. Dunn.)

### Direct Examination

By Mr. Clausen:

Q. Mr. Dunn, did you, in response to a subpoena, appear here today and bring with you the file which shows some levies of execution in respect of the certain judgment that we are concerned with here?

A. Yes, I am here in response to a subpoena, yes.

Q. Is that the file, Mr. Dunn, showing levies on or about the 11th day of September, 1951, on Dean Witter and Company?      A. Yes.

Mr. Robertson: May it please the Court, I think that Bay City can stipulate that a levy of execution was issued out of that action in the Superior Court of San Francisco County and served upon Dean Witter and Company and that subsequently [41] Dean Witter and Company, by the Blair exhibit, returned to the Sheriff, "No account of Crofoot in said Company."

Mr. Clausen: All right, we will pass that, accept that stipulation.

Q. Then, Mr. Dunn, does the record show a levy subsequently under that same judgment and execution on Blair Holdings Corporation?

A. Yes, in fact, two levies.

Q. And what dates?

A. November 28, 1951.

Q. And what other?

A. And February 13, 1952.

Q. Does the record there show the levy on No-

(Testimony of Howard E. Dunn.)

vember 28, 1951, as being on any shares of stock of E. J. Crofoot?

A. The levy was made for any and all shares, stocks or shares and interest in stocks or shares of Blair Holdings Corporation, a corporation.

Q. Belonging to? A. E. J. Crofoot.

Q. On whom was the levy made at Blair Holdings Corporation, Mr. Dunn?

A. N. H. Wendell, Jr., assistant secretary.

Q. May I have the papers on those processes, the November 28, 1951, and February 13, 1952, Mr. Dunn?

A. May I ask what papers you refer to? [42]

Q. Whatever papers that you referred to.

A. Well, I have our record cards here of the levy, and, of course, the original returns were returned to Court. Those were transcribed from the original returns of the Deputy and instructions, and the copy of letters.

Mr. Robertson: If it please the Court, we object. If counsel could advise what is the materiality of the levy and execution on the Blair Holdings Corporation—the issue in this case is the question of the title to some 2,000 shares of stock in the Dean Witter and Company.

Mr. Clausen: The point I thought I made clear this morning, and I was on the point of elaborating when your Honor said we should marshal the facts and then argue the case, but I will answer counsel *ex industria*. Your Honor, my point is we are entitled to this stock without any levy. We

(Testimony of Howard E. Dunn.)

didn't need any levy of execution at all, and entitled to the stock, your Honor, under the terms of the stipulation and, for example, on page 3, one short sentence:

“Said two thousand shares of stock shall be left in escrow in the possession of Dean Witter and Company, pending a written order releasing the same on order of Crofoot and Blair or the order or award of said arbitrator, directing said release.”

And we claim, your Honor, since Crofoot has disclaimed any interest in it and the other remaining party is Blair, that [43] Blair is entitled to the stock.

Moreover, we claim the stock on the additional ground of the very judgment itself, in the award which I haven't yet put in evidence, your Honor.

And the third ground that *ex industria*, as I said, we have had these levies made.

The Court: In any event, there is no question about these levies?

Mr. Robertson: Well, it appears, your Honor, that they are incompetent, irrelevant and immaterial insofar as the levy relates to a levy by Blair Holdings Corporation, an execution on themselves, I can't see the materiality of it. The only issue before your Honor today is the title, or the rights in and to the stock in Dean Witter and Company. That execution the witness has testified was made and we have stipulated pursuant to the order that a return was made by Dean Witter that Crofoot had no account with that company. Any levy of

(Testimony of Howard E. Dunn.)

execution on—by Blair Holdings Corporation—Blair Holdings Corporation I would object to as being incompetent, irrelevant and immaterial. We are not here litigating any issue of shares of Blair Holdings Corporation owned by Blair Holdings Corporation.

Mr. Clausen: Your Honor, it so happens in this case that Blair Holdings Corporation was the judgment creditor of some stock which, under that escrow, if there was any interest at [44] all in Crofoot would be subject to execution. Now, our code tells us the manner in which execution shall be levied, and we followed that procedure. Therefore, I have here the process from the Sheriff taken from——

The Court: If there is any doubt about it I will allow it to go in over your objections.

Mr. Robertson: Subject to motion to strike?

The Court: Yes.

Mr. Robertson: Thank you.

Mr. Clausen: With respect to that, then we offer in evidence these various documents that I have just now obtained from Mr. Dunn, and I will ask Mr. Dunn——

The Court: So the record is clear, indicate for the purpose of the record the purpose of the offer of these levies.

Mr. Clausen: Yes, your Honor. As I said before, the purpose of the levy is to show that as an additional reason, as an additional reason, why, the stock should go to Blair rather than to these defendants. We levied executions and these executions



(Testimony of Howard E. Dunn.)

were on the specific stock, related to the specific stock of those shares that are referred to in the escrow. We certainly do not waive any rights or remedies under the stipulation, which is the basic document.

The Court: So you are not misled, I am unable to follow in relation to these levies going to the merits of this case. However, I will give you a record on it. Proceed. [45]

Mr. Clausen: Yes, your Honor. May I ask Mr. Dunn what he wants in reference to these documents. They are original papers. May we leave them here until this case is concluded?

The Witness: Whatever is the pleasure of the Court in the proceedings, I don't know.

The Court: With the understanding they will be returned to you and you will be responsible for them.

Mr. Clausen: On the conclusion of the case.

The Court: Any questions, counsel?

Mr. Robertson: I was going to stipulate I would have no objection to their being removed and photostats be substituted, subject to our original motion to strike them altogether.

The Court: I think that would be the better thing to do.

Mr. Clausen: All right. All right, Mr. Clerk, would you then return them to Mr. Dunn and Mr. Dunn, if you would have photostats made at my expense and sent to me I will give those to the Court instead.



(Testimony of Howard E. Dunn.)

The Court: So that you will have your original record.

The Witness: Yes, your Honor.

Mr. Clausen: That is all.

The Witness: That would be in both of these matters, sir?

Mr. Clausen: Thank you. May Mr. Dunn be excused, your Honor?

The Court: He may be excused.

(Witness excused.) [46]

Mr. Clausen: Mr. Adams, will you step forward, please?

#### HARRY S. ADAMS

was called as a witness on behalf of the defendant, Blair, who, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as hereinafter indicated:

The Court: Please state your full name.

The Witness: Harry S. Adams.

The Court: Your business or occupation?

A. Vice president and treasurer of Blair Holdings Corporation.

Q. Of what?

A. Vice president and treasurer of Blair Holdings Corporation.

#### Direct Examination

By Mr. Clausen:

Q. That is the corporation here in litigation, Mr. Adams?

A. It is.

(Testimony of Harry S. Adams.)

Q. And you held that position, Mr. Adams, for how long?      A. Since April of 1952.

Q. And in regard to the time with which we are concerned you know that the corporate records show that in the year 1951, September, October, November, December, that N. H. Wendell was an assistant secretary of that same corporation?

A. He was.

Q. Now, that corporation had an office here during those [47] months and in that year, did it not?

A. It did.

Q. And during that time did it have activities going on such as stock transfers here?

A. It did.

Q. Now, Mr. Adams, in respect to the judgment that we are concerned with here, a judgment not introduced in evidence yet, but you're acquainted with the litigation here. Can you tell me if anything has been paid on that judgment, and if so, the approximate amounts?

Mr. Robertson: Objected to, your Honor, as being incompetent, irrelevant and immaterial. The only issue before this Court is the title to two thousand shares of stock in Dean Witter and Company, and whether or not any sums of money have been paid on judgment is not an issue before this Court, as framed by the pleadings.

Mr. Clausen: Well, your Honor, the stock itself, the stock itself to be applied on the judgment, and the stock itself, your Honor, the stock itself would be available to Blair for that purpose and, there-

(Testimony of Harry S. Adams.)

fore, my question is to show that little, very small amounts have been paid. The judgment, your Honor, is a very substantial judgment, that very small amounts have been paid on the judgment by the process of execution and by the process of application of funds.

Mr. Robertson: Whether or not, your Honor, Mr. Crofoot [48] has or has not paid any sums on the judgment is not an issue in this case.

The Court: I don't see it has any.

Mr. Clausen: It would have its application, this materiality, your Honor, that if Blair had the judgment, in the alternate, that Blair would be entitled to apply, your Honor, on the payment of the judgment the very stock here in issue. In other words, the purpose, your Honor, of the proceeding here would be a bond to indemnify and protect Blair and, therefore, the stock itself here in dispute, the stock in issue would be the property of Blair in order to apply on the judgment.

The Court: I will allow it over your motion to strike and over your objections.

Q. (By Mr. Clausen): Mr. Adams, what is the status of the account?

A. Somewhere in the neighborhood of \$2,600 have been paid on the judgment.

Q. Is that all?           A. That is all.

Q. What is the present value of the stock, Blair Holdings Corporation stock we are concerned with?

A. Traded yesterday at two seventy-five a share.

(Testimony of Harry S. Adams.)

Mr. Clausen: That is all. You may take the witness. Pardon me, one more question. [49]

Q. There is an allegation in the complaint in interpleader and I believe there has been a denial, so I will ask the question in quick form by reading this allegation, tell me whether it is correct:

“Defendant Blair Holdings Corporation is a corporation incorporated under the laws of the State of New York. Defendant Blair-Rollins & Co., Incorporated, is a corporation incorporated under the laws of the State of Delaware. Defendant Blair & Co., Inc., of New York is a corporation incorporated under the laws of the State of California.”

As far as you know those allegations are correct, are they? A. They are.

Mr. Clausen: That is all.

### Cross-Examination

By Mr. Robertson:

Mr. Robertson: May it please the Court, without prejudice to my motion to strike the exhibits of the Blair parties concerning the writs of execution, I would like to pursue one or two questions with this witness.

Q. Mr. Adams, are you aware of the fact that counsel for Blair Holdings Corporation levied a writ of execution on Blair Holdings Corporation some time in 1951? A. In detail, no.

Q. Can you tell us whether or not your corporation made a [50] return to the Sheriff of that writ of execution? A. I cannot.

(Testimony of Harry S. Adams.)

Q. Is there anyone in your company who can so testify?

A. Mr. Wendell, former assistant secretary, is no longer with the corporation.

Mr. Robertson: Counsel, would you be willing to stipulate that the return by Blair Holdings Corporation was not made to the Sheriff on that writ of execution?

Mr. Clausen: I will be glad to examine the books and records and stipulate with counsel as to the fact.

Q. (By Mr. Robertson): Mr. Adams, as the vice president of Blair Holdings Corporation, do you claim that the Blair Holdings Corporation has any judgment against the Bay City Bank and Trust Company of Bay City, Texas?

Mr. Clausen: Object to that, your Honor, on the ground the judgment speaks for itself.

The Court: If he knows he may answer.

A. To my knowledge, I don't know.

Q. (By Mr. Robertson): Do you know whether the Blair Holdings Corporation claim to have any judgment against Phillip Barnett?

A. Not to my knowledge.

Mr. Robertson: No further questions, your Honor.

The Court: Step down.

Mr. Clausen: That is all, Mr. Adams. May the witness be excused, your Honor? [51]

The Court: May he be excused? You may be excused.

(Witness excused.)



Mr. Robertson: I will stipulate that order was made and bond was issued.

Mr. Clausen: Your Honor, we offer in evidence at this time as the Blair's next exhibit in order a certified copy of a bond in the action 383427 made by Judge Sapiro on February 8 of 1949. That is the bond, your Honor, that is referred to in Defendant's Exhibit 2-B, and which, among other things, the stock was supposed to take the place of.

The Court: Be admitted and marked.

The Clerk: Defendant's Exhibit 7-B, admitted and filed in evidence.

(Whereupon document entitled, "Order in Case No. 383427," was received in evidence and marked Defendants' Exhibit 7-B.)

Mr. Clausen: This order, your Honor, reads as follows:

"The above-entitled matter having come on regularly for hearing before the above-entitled court, Department No. 19 thereof, the Honorable Milton D. Sapiro, Judge, presiding, \* \* \*" and so forth—"defendants, Blair Holdings Corporation, a corporation; Jean Lambert and Frank Reed, appearing by Henry C. Clausen, Esq., their attorney, in response to order to show cause \* \* \*"—— [52]

Mr. Robertson: I will waive the reading of that order.

Mr. Clausen: I just would like to acquaint the Court as I go along.

The Court: He may read it.

Mr. Robertson: All right, your Honor.



Mr. Clausen (Continuing): “\* \* \* in response to an order to show cause heretofore issued by the above-entitled court on the 21st day of January, 1949”—continued to February 3, introduction of evidence.

“It Is Hereby Ordered that the defendants, Blair Holdings Corporation, a corporation, and Jean Lambert transfer those certain shares of the capital stock of the defendant, Blair Holdings Corporation, a corporation, represented by”—and there are four numbers—“\* \* \* for five thousand shares each \* \* \* as requested by the plaintiff or its agent upon the deposit with said defendant, Jean Lambert, as transfer agent for the said defendant, Blair Holdings Corporation, a corporation, an indemnity bond in the sum of \$50,000 to said corporation to protect said corporation, its officers, transfer agents and registrars, or any of them, against any loss, damage or expense or other liability to the owner of the shares by reason of the recordation of the transfer or the issuance of a new certificate for shares, in the form and for the [53] purpose and on the conditions set forth in Section 2409 of the Corporations Code of the State of California within seven days from and after the date hereof.”

Then I have here a copy of a bond that was said by counsel at the time to be the bond which I will introduce as the defendant Blair's exhibit next in order.

The Court: Admitted and marked in evidence.

The Clerk: Defendant's Exhibit 8-B admitted and filed in evidence.

(Whereupon carbon copy of bond on the letterhead of the United States Guaranty Company referred to above was received into evidence and marked Defendants' Exhibit 8-B.)

Mr. Robertson: Your Honor, this order that counsel has just read is in the Superior Court of San Francisco, entitled "Bay City Bank and Trust Company, a corporation, vs. Blair Holdings Corporation, a corporation; Jean Lambert, Frank Reed, and Virgil Dardi, defendants, case number 383427." Those are the only parties, and there is a reference to the transfer of the stock, plaintiff's stock, and the reference there is to the plaintiff, Bay City Bank and Trust Company. I point that out to your Honor because subsequently after that order there were some cross-defendants and cross-complaints and other parties brought in. At that time the Court ordered Blair to [54] turn over Bay City stock upon the posting of a bond.

Mr. Clausen: I offer in evidence now a copy of the award of the Arbitrator.

Mr. Robertson: We will object to the introduction in evidence of that award, your Honor, as being incompetent, irrelevant and immaterial, not the best evidence in that pursuant to counsel's own statement it has been modified by the Superior Court. I believe that any evidence with regards to the ultimate outcome of the litigation in the Superior Court is pertinent, it would be the decision of the ultimate court, the District Court of Appeals which came out in 1953. This order, this

merely is an award of an arbitrator which is subsequently taken to the Superior Court and modified by the Superior Court and confirmed by that Court and the day the confirmation was entered by the Superior Court it was appealed, and the Appellate Court upheld that. I think the Appellate Court decision would be the best evidence.

Mr. Clausen: If the Court please, I have all the other papers, to which counsel have averted, but this is one of the links in the chain and hard to understand the other papers without seeing—this is one of the documents before the Appellate Court, this is the actual award.

The Court: What did the Court do about it?

Mr. Clausen: It confirmed, it affirmed the judgment, that was granted on this award and which judgment was ordered [55] by Judge Devine pursuant to my motion.

Mr. Robertson: Which award of the Arbitrator held that there was conversion of the Bay City stock, of the Crofoot stock, and ordered payment to Crofoot and Bay City of the amount of the bond and held there was conversion.

Mr. Clausen: Whatever the Arbitrator held it is there, your Honor. That is the reason why it is necessary.

The Court: In the interests of time I think we better allow it to go in to be used by either side subject to your motion to strike and over your objection.

The Clerk: Defendant's Exhibit 9-B admitted and filed in evidence.

(Whereupon document entitled, "Award of the Arbitrator, March 6, 1950," referred to above, was received in evidence and marked Defendants' Exhibit 9-B.)

Mr. Clausen: I have now and introduce in evidence—rather, it is a photostatic copy of a certified copy of the Order by Judge Devine correcting and confirming the Award of the Arbitrator.

The Court: Be admitted next in order.

The Clerk: Defendants' Exhibit 10-B admitted and filed in evidence.

(Whereupon document entitled, "Order correcting and confirming Award of Arbitrator, No. 386971," [56] referred to above, was received in evidence and marked Defendants' Exhibit 10-B.)

Mr. Clausen: I have here, your Honor, and I offer in evidence a photostatic copy of a certified copy of the Judgment of the Superior Court on the Award of the Arbitrator as Corrected.

The Court: No objection; it may be admitted and marked.

The Clerk: Defendants' Exhibit 11-B admitted and filed in evidence.

(Whereupon document entitled, "Judgment on Corrected Award of Arbitrator," referred to above, was received in evidence and marked Defendants' Exhibit No. 11-B.)

Mr. Robertson: May it please the Court, in line with the objections on the award of the Arbitrator,

we object to the introduction in evidence of the judgment in that it contains no issues relevant to the question before the Court today and that is what, who owns the sixteen hundred shares of stock in Dean Witter and Company.

The Court: Well, I suppose it will be conceded the crux of this case is the ownership of this stock.

Mr. Clausen: That's right, that is why these are being offered, to show the ownership in Blair.

Mr. Robertson: Nothing there said in the judgment or decrees which relates to the ownership of stock. [57]

The Court: What is there in that that indicates ownership of stock?

Mr. Clausen: In this way, your Honor: The judgment, Paragraph 2 of this same judgment:

"It Is Hereby Further Ordered, Adjudged and Decreed that the said Blair Holdings Corporation, a corporation, do have and recover of and from the said E. J. Crofoot, the sum of \$77,931, with interest thereon at the rate of 7 per cent per annum from date hereof until paid (as and for damages for fraudulent deceive as follows:

"(1) Misrepresentations as to the March 31, 1947, balance sheet or as to the income statements for the months of January, February and March, 1947, or (2) for misrepresentations as to unfilled orders as of March 31, 1947);" so that is a matter, your Honor——

Mr. Robertson: Well, if the Court pleases——

Mr. Clausen: And then it stated:

"\* \* \* and that the recovery by said Blair Hold-



ings Corporation of this judgment under II”—that is Paragraph II—“shall satisfy the other judgments herein for damages against said E. J. Crofoot, and shall satisfy, pro tanto, the judgment hereinafter for damages against said Paul [58] Rice.”

In Paragraph III: “It Is Hereby Further Ordered, Adjudged and Decreed that said Blair Holdings Corporation, a corporation, do have and recover of and from said E. J. Crofoot, the sum of \$35,158.56, with interest thereon at the rate of 7 per cent \* \* \* (as and for damages for fraudulent breach of fiduciary obligations to disclose to Blair Holdings Corporation the existence of the CMAC Guaranty), \* \* \*”

The Court: Has the judgment been satisfied on that?

Mr. Clausen: No, your Honor. No, that is why I had Mr. Adams testify this morning, none of these have been satisfied.

Mr. Robertson: But, your Honor——

Mr. Clausen: The only amounts paid on account or deposited on account was this small sum that he mentioned.

Mr. Robertson: If it please the Court, I don't like to interrupt, but in the interests of time, your Honor, I would ask where does that judgment relate to these particular shares of stock and this stock of Dean Witter, interpleader against Blair, Crofoot, Bay City Bank and Trust, and Phillip Barnett? Now, the only interest in the title of the stock in the Dean Witter Company, Mr. Barnett in



his answer set up an issue in this suit that the Arbitrator did not dispose of that stock or enter any award upon it. I don't think anyone here can realistically or reasonably contend he did, because he did not make any award relating to that stock. The other [59] provision under the stipulation says if he did, that it should be distributed—not distributed, should be released pursuant to order of the Arbitrator or by joint order of the parties, and the Arbitrator did not make any award on that score whatsoever. They have admitted they don't claim any judgment against Barnett or the Bay City Bank and Trust. We claim we own the stock. We have demonstrated that conclusively, have title in that stock in Dean Witter. That is an irrelevant issue in this decree about breach of warranty as to Crofoot and so forth, hasn't any bearing whatsoever in this case.

I do admit this, that if they have a judgment against Mr. Crofoot they can go out and levy an execution on his automobile or on his property. Now the issue is that they claim this sixteen hundred shares of stock is Crofoot's; we claim it is Bay City's, and we have demonstrated the title to the stock. I think they should demonstrate that Crofoot has title to that stock, otherwise they have no right to levy a writ of execution upon it and when they levied a writ of execution Dean Witter responded before this suit was filed that Crofoot has no account with them.

Mr. Clausen: Now, your Honor, counsel is again embarking upon the realm of argument. I just get

myself back in the position I was in when I was reading this and called the Court's attention to the fact that I would like at the proper time sufficient time to argue the case. [60]

Now, our position in brief, again, as I said before, is this: That by the statement in writing of Barnett, as well as these others, in so many words we think the stock was either Blair's or Crofoot's, and when Crofoot does not claim it, it belongs to Blair, your Honor, under the terms of the document.

But counsel is in error when he says there is no reference in this judgment to stock, and I will come to that. [61]

Mr. Robertson: You show me in that judgment where——

Mr. Clausen: Counsel!

Mr. Robertson: ——where the Arbitrator made an award relative to the two thousand shares of stock.

Mr. Clausen: Your Honor, may I proceed without interruption of Counsel?

The Court: If you gentlemen are not careful, you will make me nervous. Proceed.

Mr. Clausen: Your Honor, I was in the middle of Paragraph Three. In order to get the continuity, may I reread it?

Blair recovers from Crofoot the sum of Thirty-five Thousand some odd dollars plus——

“\* \* \* (as and for damages for fraudulent breach of fiduciary obligation to disclose to Blair Holdings Corporation the existence of the C.M.A.C. guarantee), and the recovery by said Blair Holdings Cor-

poration of this judgment under III hereof shall satisfy the judgment for said Blair Holdings Corporation under I above to the extent of Subparagraphs (A) and (C) thereof \* \* \* and the judgment \* \* \* under II above to the extent of the difference in amount \* \* \*''

Paragraph IV further ordered, adjudged and decreed that [62] Blair Holdings Corporation recover from Paul Rice the sum of some \$25,000 plus, with interest at six per cent until paid, and recovery by Blair of this would satisfy, pro tanto the recovery against Crofoot.

And then in five, it is hereby ordered, adjudged and decreed that provided that said E. J. Crofoot shall first have transferred to said Blair Holdings Corporation thirty-three thousand seven hundred and twenty-five shares of its stock evidence by its certificates therefor, that the said E. J. Crofoot shall have and recover from said Blair Holdings Corporation the sum of \$158,182.86 with no interest, except at the rate of seven per cent from the date of said transfer until paid, comprising the sum of \$144,522.50 damages for the conversion of fifty-one thousand seven hundred and twenty-five shares of said Blair Holdings Corporation stock, the sum of twelve thousand some odd dollars as the net amount of dividends withheld, and \$729 as the interest on said dividends at six per cent per annum, all provided, however, that recovery by said Crofoot of this judgment under V hereof shall satisfy the judgment for said Crofoot under VI hereinafter, to

the extent that the said \$158,000 odd dollars and that the said judgment under V hereof for the said Crofoot and its enforcement is hereby conditioned, that the said E. J. Crofoot first transfer to said Blair Holdings Corporation 33,725 shares of its said stock evidenced by its certificates therefor. [63]

The Court: Does that have to do with our shares here in question?

Mr. Clausen: He would be entitled, your Honor——

Mr. Robertson: No, your Honor.

Mr. Clausen: He would be entitled, your Honor, if the two thousand shares of stock here proceed according to the terms of the——

The Court: What stock are they talking about in that transaction?

Mr. Clausen: They are talking about the stock of Blair Holdings Corporation, the same kind of stock.

Mr. Robertson: Which he owns——

Mr. Clausen: Pardon me, Mr. Robertson. Any kind of stock, Blair Holdings Corporation stock, this identical kind of stock.

The Court: I see.

Mr. Clausen: In other words, how or where he would get the stock would be up to him, because the way it reads, your Honor, is just like that, and of course, as Mr. Adams testified this morning, nothing has been paid on the judgment. So——

Mr. Robertson: That is the very point we make, your Honor.



Mr. Clausen: Thirty-three thousand seven hundred and twenty-five shares of its stock, it says: "Of its stock." Any kind of its stock.

Mr. Robertson: If this stock in Dean Witter is Crofoot's, [64] then they can execute on it. That is the whole issue. We say it is not Crofoot's.

Mr. Clausen: Your Honor, I don't know, Counsel interrupts like that, I don't know, if by not replying, your Honor, whether your Honor wants me to reply or not.

The Court: You may go along, I allow the widest latitude, so much so I could be very well criticized, in order to get to the truth of the situations.

All right, we will proceed.

Mr. Clausen: The balance of this paragraph V, again, your Honor, is further to the effect that Blair, your Honor, couldn't recover twice. You see, with all these actions going, some of Blair's grounds or cause of action against Crofoot and against Rice were fraud as the Court here outlined here——

The Court: That fraud may have occurred there, but I can't see this has any relation to what we are trying to do here, namely, establish the ownership legally.

Mr. Clausen: Of two thousand shares.

The Court: Yes.

Mr. Clausen: But I say to your Honor that some of the causes of action were for fraud and some were for breach of warranty.

The Court: Yes.

Mr. Clausen: That is the reason why the Court here, in following the award, your Honor, mentioned that if you recover [65] under this paragraph that you can't recover under that paragraph.

In other words, one recovery would also carry with it the recovery for the other grounds and causes of action. That is the reason for the alternative.

The Court: Well, in any event, the judgment will speak for itself.

Mr. Clausen: That is right, your Honor.

The Court: All right.

Mr. Clausen: Now, Paragraph VI, your Honor, is again that provided that Crofoot shall first transfer to Blair Holdings Corporation thirty-three thousand seven hundred and twenty-five shares of its stock, that Crofoot then would recover, could recover from Blair and Virgil Dardi jointly the sum of \$159,000 some odd dollars as joint damages, and again with alternative selections and extinguishments of the judgment.

Then Paragraph VII, further ordered that Crofoot recover from Blair Holdings Corporation the sum of \$1,270 with interest at seven per cent, cost to Crofoot of the bond posted to transfer twenty thousand shares of said stock. That, your Honor, ties into the bond that has been introduced here in evidence, and again, your Honor, it refers to the same kind of stock.

Then Paragraph VIII has to do with Rice. Paragraph VIII, your Honor, is to the effect that pro-



vided the necessary transference of some seven thousand and fifty shares, that Rice [66] similarly may recover certain judgments against Blair in the sum \$23,000.

Then Paragraph IX is again a small item of \$300.

And Paragraph XI is to the effect that all contentions of the parties in the Arbitration proceedings are finally, conclusively determined by the Court, by the Arbitrator as confirmed in this judgment, and dismissing, or rather finding that there is nothing as to certain other defendants.

Now, your Honor, I offer in evidence merely for convenience of the Court, the decision of the District Court of Appeal. I have a copy here of the advance sheet your Honor.

The Court: Very well.

Mr. Clausen: It is reported in 119 A.C.A. Page 207, which summarizes all that I have been trying to say in much more succinct fashion.

The Clerk: Defendant's Exhibit 12-B admitted and filed in evidence.

(Whereupon Decision of the District Court of Appeal, referred to and more particularly described above, was received in evidence and marked Defendant's Exhibit 12-B.)

Mr. Clausen: Your Honor, I was thinking, as I was reading that Judgment, I don't know if I asked Mr. Adams, the fact is that neither Rice—I certainly intended it to be included by the question I asked—neither Rice nor Crofoot, [67] except as may possibly be the case under the stipulation as to

two thousand shares, but neither Crofoot nor Rice have ever delivered to Blair; I will put it, Crofoot certainly has never delivered to Blair——

Mr. Robertson: Your Honor please, may it please the Court——

Mr. Clausen: May I——

Mr. Robertson: I wish to interpose an objection to statements about whether this judgment has or has not been satisfied by Counsel, because it is incompetent, irrelevant and immaterial. It does not in any way relate to the issues before this Court as to the title of the sixteen hundred shares of stock. Again I wish to state, your Honor, that we claim no interest in the other four hundred shares. Whether this judgment has or has not been set aside, has nothing to do with the title of that stock.

Mr. Clausen: I was on the point of saying, your Honor, I didn't recall whether I asked Mr. Adams if Crofoot had delivered to Blair the specific stocks here referred to by the Court in its judgment, 33,725 shares, except as it may be the two thousand here in Court, and therefore I would like the privilege of having Mr. Adams come back and I will ask him that question.

The Court: Maybe you can get a stipulation.

Mr. Clausen: Exactly what I wanted to ask. Will it be [68] stipulated if I asked him this he will testify to the effect that none of the thirty-three thousand, seven hundred and twenty-five shares have been transferred to Blair by Crofoot and——

Mr. Robertson: I will so stipulate that if the witness was called, he would so testify. However, I

will interpose an objection to such question on the grounds it is incompetent, irrelevant and immaterial.

Mr. Clausen: I understand.

The Court: I think his objection is good; I will give you a record on it.

Mr. Clausen: Yes, your Honor. May we have the same stipulation that Paul Rice has not transferred those seven thousand fifty shares to Blair?

Mr. Robertson: I will so stipulate that he would so testify, and interpose the same objection to the question, incompetent, irrelevant and immaterial.

Mr. Clausen: All right.

The Court: Let the record so show.

Mr. Clausen: That is all we have at this time, your Honor.

The Court: Is that your case?

Mr. Clausen: It is the case of the Blair Corporation at this point, your Honor.

The Court: Well, at this point what else have you got? [69]

Mr. Clausen: Why, I would assume they would put on—we are both defendants, so as far as I am concerned, I would say we rest, your Honor, for Blair Holdings Corporation. [70]

\* \* \*

June 9, 1954—2:00 P.M.

Mr. Robertson: Proceed, your Honor?

The Court: Yes.

Mr. Robertson: Defendant Bay City and Phillip Barnett will call Phillip Barnett as their witness.

### PHILLIP BARNETT

one of the defendants herein, was called on his own behalf and on behalf of the defendant Bay City Bank & Trust Company, and being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as hereinafter indicated:

The Clerk: Please state your name for the record.

The Witness: Phillip Barnett.

### Direct Examination

By Mr. Robertson:

Q. You're an attorney-at-law, licensed to practice in the State of California? A. I am.

Q. Were you retained by the Bay City Bank & Trust Company, Bay City, Texas, in regards to certain shares of stock, Blair Holdings Corporation? A. I was.

Q. When were you so retained?

A. The latter part of 1948. [72]

Q. And what were you retained by the Bay City Bank to do?

Mr. Clausen: Object to that, your Honor, as incompetent, irrelevant, immaterial.

(Testimony of Phillip Barnett.)

The Court: Objection overruled. He may answer.

The Witness: I was retained by them to force Blair and Company to transfer on their books twenty thousand shares of stock that formerly stood in the name of E. J. Crofoot. Bay City Bank wanted to sell those shares of stock.

Q. And do you know of your own knowledge, personal knowledge, how Bay City Bank acquired those shares of stock? A. I do.

Q. And how did they so acquire the twenty thousand shares of stock?

A. They were pledged as security for a payment of thirty-five odd thousand dollars, which the Bay City Bank & Trust Company of Bay City, Texas, loaned to Mr. Crofoot and/or a rice mill that he was interested in.

Q. And these shares of stock were pledged to secure that note, is that correct?

A. They were pledged to secure that note and in the possession of the Bay City Bank and Trust Company in Bay City, Texas.

Q. And do you know what occasioned the Bank to request your assistance in securing the transfer of those shares of stock?

A. Blair and Company refused to transfer the shares of stock on their books. [73]

Q. And for what reasons, why was the Bank wishing to dispose of those shares of stock?

A. Mr. Crofoot was delinquent in his payment to the Bay City Bank and Trust Company. He



(Testimony of Phillip Barnett.)

could not pay the principal sum of the loan which was due and owing.

Q. Are you familiar with the substance, the terms that existed between Bay City Bank and Trust Company and the defendant Crofoot here?

A. I am. I have a copy in our files.

Q. And what, in substance, were the terms of those notes?

Mr. Clausen: I object to that, the note would be the best evidence.

Mr. Robertson: I asked the witness, your Honor, if he was familiar with the general terms and conditions of the note. He said that he was, and I asked him generally what those terms were. I have in mind, your Honor, just one point here, that is, that the Court provided, in addition to the payment of the principal balance of the note, which was thirty-five thousand, also provided for a ten per cent charge for attorney fees in the event the notes had to be collected or collateral had to be sold for collection, and I want to develop Mr. Barnett's claim here in this stock arrangement that he had with the bank, that the balance of shares not needed to liquidate this note would be for his retainer fee, for services rendered. [74]

The Court: Counsel is calling for the best evidence.

The Witness: You have the note there.

Mr. Robertson: I have a copy of the note there. Counsel, the original note, as I recall, was put in evidence before the arbitrator, which you are fa-



(Testimony of Phillip Barnett.)

miliar with. Wonder if you would stipulate a copy may be——

Mr. Clausen: I can't stipulate to the note; I can't.

Mr. Robertson: I ask you, Mr. Barnett, whether you know of your own knowledge that the original of this note was placed in evidence before the Arbitrator in the proceedings in the Superior Court?

A. That is my recollection.

Q. Do you recall what the terms of that note provided in regard to attorney's fees?

A. Ten per cent.

Mr. Clausen: I object to that——

The Witness: The principal due——

Mr. Clausen: Pardon me, Mr. Barnett. I object to it, same ground, your Honor, that the note would be the best evidence.

The Court: If it is available, if it is not, why, he may. Is it available, do you know?

Mr. Robertson: No, your Honor, the original note, as I recall—that has been some four years ago, was in evidence before the Arbitrator, and we made an agreement in the [75] Arbitration proceedings that the Arbitrator would keep all those files at Stanford University, depending upon the order of the various parties as to disposition. As far as I know, that is still in those files.

The Witness: That's a copy.

Mr. Robertson: We have a copy of the note here which was used also in reference to the Arbitration Proceedings. I believe the witness can identify this

(Testimony of Phillip Barnett.)

as a true and exact copy of the note which he has knowledge of.

The Witness: Show it to him. I recognize this as a copy of that note which shows that it is secured by twenty thousand shares of stock.

Mr. Clausen: I object to the witness volunteering as to what it shows, your Honor.

The Court: Well, secondary evidence is admissible here in the absence of being able to produce the original, and if he is familiar with it, he may testify. Objection overruled.

The Witness: It is dated Bay City, Texas, 9-16-48, \$35,000, six months after date, without grace, for value received, I, we, or either of us, promise to pay to the order of the Bay City Bank and Trust Company, Bay City, Texas, \$35,000.

And then it states the ten per cent of the total amount shall be used for attorney's fees and costs. And then in the left-hand side, secured by twenty thousand shares of Blair and [76] Company stock. It is signed Tuckerman Rice Milling Company by J. K. Carr and E. J. Crofoot.

That is a copy, as I remember it, of the original note.

Mr. Robertson: The defendant Bay City Bank, your Honor, will introduce this as their next exhibit in order.

The Court: May be admitted and marked next in order.

Mr. Robertson: Thank you.

(Testimony of Phillip Barnett.)

The Clerk: Defendant's Exhibit E admitted and filed in evidence.

(Whereupon note from Carr & Crofoot to Bay City Bank and Trust Company, dated 9/16/48, referred to and more particularly identified above, was received in evidence and marked Defendant's Exhibit E.)

Mr. Clausen: Your Honor, may my objection of this morning, your Honor, run to this line of testimony? I objected this morning, your Honor, that this was irrelevant to the main issues and to the written documents, and an attempt to vary the written documents, being the stipulation, your Honor, which was sent to Witter and Company, and I would assume that my objection is covered by your Honor's admission of the evidence this morning subject to my later motion to strike.

The Court: Very well.

Q. (By Mr. Robertson): Mr. Barnett, subsequent to your retention by the Bay City Bank to secure the transfer of the [77] stock, will you please tell us what steps were taken by you to secure the transfer of those twenty thousand shares of stock?

A. Well, I first attempted to, by other than litigation, to persuade Blair and Company to transfer the stock through a Mr. Reed, who was the transfer agent, and a Miss Lambert, who was in the office of Blair and Company. And failing to accomplish that, we instituted a suit in the State Court pursuant to the Corporations Code, in which we

(Testimony of Phillip Barnett.)

sought to compel Blair and Company to transfer the stock. Litigation resulted from that, as a result of which, upon the securing of a bond in the sum of \$50,000 to indemnify Blair if they suffered any damage from the transfer of the stock, we had it subsequently transferred pursuant to that order to show cause.

Q. That was the order that was introduced this morning as Blair Exhibit 7-B, Judge Sapiro's order?

A. I believe so, yes.

Q. And Mr. Barnett, subsequent to the execution of Judge Sapiro's order, Blair's Exhibit 7-B, were you able to effect the transfer of these twenty thousand shares of stock on the books of the Blair Company from the name of Edmund J. Crofoot to Bay City Bank and Trust Company?

A. Well, not immediately, but we accomplished it subsequently, some resistance by Blair, in spite of the order, but we subsequently accomplished [78] it.

Q. And I show you, Mr. Barnett, an invoice under the heading of Blair and Company, dated March 5, 1949, and addressed to Mr. Phillip Barnett, Attorney, regards to Certificates Nos. SHF 2805, 2806, 2807, and 2808, issued to the Bay City Bank and Trust Company for five thousand shares each, or a total of twenty thousand. Ask you if you received that from the Blair Holdings Corporation?

A. I did.

Q. And what is that document, Mr. Barnett?

A. Well, it purports to be a delivery receipt,

(Testimony of Phillip Barnett.)

which it is, says, "We enclose the following stock certificates of this corporation," enumerating them and issued to the Bay City Bank and Trust Company from the name of E. J. Crofoot. I deposited those very shares with Dean Witter subsequently.

Mr. Robertson: Offer this as our next exhibit in order.

The Court: May be admitted and marked.

The Clerk: Defendant's Exhibit F, admitted and filed in evidence.

(Whereupon Invoice of Blair & Company, dated March 5, 1949, referred to and more particularly described above, was received in evidence and marked Defendant's Exhibit F.)

Q. (By Mr. Robertson): So that upon these twenty thousand shares of stock as transferred by Blair to Bay City Bank, you caused them to be deposited with Dean Witter and Company? [79]

A. I did.

Q. And to whose account were they deposited in Dean Witter and Company?

A. Bay City Bank and Trust Company, subject to my directions as to sale.

Q. And what instructions did you have from the Bay City Bank and Trust Company regarding the sale of those shares of stock?

A. Sell them.

Q. And did you do this?

A. I did in such a manner as would not disturb



(Testimony of Phillip Barnett.)

the market too much. Mr. Dardi, who is the head of Blair——

Mr. Clausen: Object to that as a gratuitous statement and ask it go out. Counsel is volunteering, and he has already answered the question.

Mr. Robertson: He said he did sell them, and now he is explaining how he sold them.

Mr. Clausen: Your Honor, the question called for just yes or no, and Counsel is a witness who is testifying, and I think——

The Court: In any event, you did what? What is the ultimate fact?

The Witness: Well, I sold them, your Honor, but we sold them in such a way as not to disturb the market too much. That was at the request of Mr. Dardi of Blair and Company, with which request we cooperated. [80]

Mr. Clausen: The last part, your Honor, is what I objected to, should go out, requests hearsay.

The Court: Is Mr. Dardi available?

Mr. Clausen: Not an officer any more, as I understand it.

The Court: Let the record stand.

Q. (By Mr. Robertson): Mr. Barnett, what was done with the proceeds of the sale of the shares of stock under the name of Bay City?

A. The proceeds were deposited with Wells Fargo Bank in the account of the Bay City Bank and Trust Company, or credited to their account to the Bay City people.

Q. Now, Mr. Barnett, I will show you Defend-

(Testimony of Phillip Barnett.)

ant Bay City's Exhibit C, which is a ledger sheet of Dean Witter and Company relating to the sale of those stocks. I will ask you if it is not a fact that said ledger sheet demonstrates that the early sales made of parcels of said stock were sold at approximately \$2.25 a share, is that correct?

A. That's correct.

Q. And subsequently sales were getting down to around, March 16th they were only selling for about \$1.50 a share, is that correct?

A. Yes, that is correct.

Q. And did the reduction in the sales price of the shares have anything to do with the failure or withholding of sale of any further stock in that Dean Witter account? [81]

A. Well, that, as well as the general atmosphere existing at or about that time. I mean, the atmosphere between the parties involved.

Q. Now, Mr. Barnett, did you have a prearrangement with the Bay City Bank which relates to the shares of stock on deposit with Dean Witter and Company?

A. Well, it was understood I was to get ten per cent, as the note called for.

Q. Attorneys' fees for services?

A. Attorneys' fees and costs.

Q. And I will ask you, Mr. Barnett, what is your claim or the claim of your client, Bay City Bank and Trust Company, to the shares in the Dean Witter Company at the present time, which is the subject matter of this suit?

(Testimony of Phillip Barnett.)

Mr. Clausen: Object to that, your Honor, calling for the conclusion, asking a lawyer on the witness stand to argue the case, what his claim is. The claim is set forth in the pleadings.

The Court: I will allow the question. Objection overruled. You may cross-examine him.

The Witness: Well, it is the fact that this part of the twenty thousand originally deposited to all the purposes of the pledge, and it is still, in my opinion, the property of the Bay City Bank and Trust Company, or myself as their authorized agent; always has been. [82]

Q. (By Mr. Robertson): Mr. Barnett, just for the record, I show you a letter, copy of a letter of March 11, 1949, from you to Dean Witter and Company.

While Counsel is looking at that, your Honor, I might say——

Mr. Clausen: Well, now, I can't do both.

Mr. Robertson: All right, go ahead. I am sorry.

I might say to Counsel, your Honor, that we have a copy of a letter sent to Dean Witter on March 11, 1949. We searched Witter's letter files this morning, which were subpoenaed, and the original does not appear to be there, and I was advised by the gentleman who appeared today that a Mr. Stack formerly handled this matter for Dean Witter, but he is no longer with them, and some of the files may have been misplaced, and for that reason we don't have the original of this letter, and produce the copy of it and ask the witness to identify it.

(Testimony of Phillip Barnett.)

Q. (By Mr. Robertson): I show you a copy, Mr. Barnett, of this letter of March 11, 1949, from you to Dean Witter, transmitting certain shares of stock to Dean Witter in the total number of fifteen thousand, and ask if you sent that letter to Dean Witter with the stock certificates?

A. Yes, and as the letter states, that the fifteen thousand were, together with the five thousand sent two days before, makes the twenty thousand.

Q. That is the covering letter that, from which the fifteen [83] thousand shares and previous five thousand were deposited with Dean Witter?

A. Yes, that's correct.

Mr. Robertson: The defendant Bay City Bank offers this as their next in order, your Honor.

The Court: Be admitted and marked.

The Clerk: Defendant's Exhibit G admitted and filed in evidence.

(Whereupon copy of letter dated March 11, 1949, from Barnett to Dean Witter, referred to and more particularly described at Page 83 of this transcript, was received in evidence and marked Defendant's Exhibit G.)

Q. (By Mr. Robertson): Now, Mr. Barnett, on or about April 26, an Arbitration Proceeding commenced before Judge, or Arbitrator Osborne in these various matters between Bay City Bank, Crofoot and Blair, is that correct?

A. That is correct.

Q. Are you familiar with the facts and circum-

(Testimony of Phillip Barnett.)

stances surrounding the execution of the stipulation, which is Defendant Blair's No. 2-B?

A. I am.

Q. I will show you two stipulations—they are two different stipulations, but they contain the same subject matter and [84] merely in two copies for the purpose of various signatures, isn't that correct?

A. That's correct.

Q. Would you state, please, the circumstances surrounding the execution of that stipulation?

Mr. Clausen: I object to that, your Honor—we would object to that, your Honor, as incompetent, irrelevant and immaterial. The stipulation speaks for itself; it is a signed document, no ambiguities in it.

The Court: Well, I will allow it. It is a preliminary question; I don't know what it is.

The Witness: Well, the first suit was the Bay City Bank and Trust Company against Blair to force them to transfer this stock into its name from E. J. Crofoot. Blair filed a cross-complaint bringing in additional parties, and then those additional parties filed cross-complaints, bringing in other parties. By the time it simmered down to the real end of the pleading stages, the Bay City Bank and Trust Company was remotely removed from the real party in interest by charges of fraud and counter-charges of fraud and deceptions and what-not, and Mr. Clausen and I were, I think, chief counsel at the start, and against our advice, and we sort of



(Testimony of Phillip Barnett.)

were substituted by New York counsel, and then it seems that Crofoot and Dardi again, without the consent of Mr. Clausen or myself, agreed to some type of an arbitration, and we found ourselves [84-A] a little bit removed from the active participation of the trial, except in certain particulars.

It seems that the two principals went down and agreed on Mr. Osborne to arbitrate these issues, and we went along on stipulations, not only this one, there were other stipulations, as far as we could go, not that we wanted to do that, but we out of expediency and in the hope of compromising this entire mess something may result.

The Arbitration proceedings started, I believe, in April, or thereabouts, and in the meantime the premium on this bond on fifty odd thousand dollars came due again with a premium of a thousand odd dollars, and we thought that from a practical point of view it was rather ridiculous to spend this \$1,000 inasmuch as Blair and Company was already protected by the bond and the premium paid on that bond, and that for the few shares remaining as of that time, the exact number escapes me, it would just be a waste of money, no matter who won, to pay the thousand dollars.

So in the spirit of assisting in this general atmosphere of trying to compromise, and these talks were going on, it was suggested, I don't know who suggested it, but I think Mr. Clausen did, or Mr. Whitney, one of them, Mr. Halloran, from New York, that if we would leave the sixteen hundred shares

(Testimony of Phillip Barnett.)

up and raise that to two thousand, why, they would forego the expense of this bond, and that was the only reason for leaving [85] that stock alone.

I contacted the Bay City Bank and Trust Company, Mr. Hamill, and I spoke with the parties interested, and I could see no harm in doing that. I thought it was a practical thing to do. But Mr. Crofoot did not, at that time, have four hundred shares of Blair stock, nor did my clients feel like putting up any more than was actually there. So in the spirit of assisting in this phase of it, Mr. Dardi, who was the President, and he really dictated the policies of Blair and Company, loaned four hundred shares, and that was likewise placed in escrow making up the two thousand shares. And that was the only purpose of it so that we could eliminate the cost of the bond. But it was never intended to transfer title to anybody.

Q. Now, neither yourself nor the Bay City Bank claimed any interest in the four hundred shares, to your knowledge?

A. No, Mr. Dardi called me and wanted that released after the question of the Bay City Bank became a moot issue, and I wrote a letter, I believe, to Mr. Clausen, and I signed it, suggesting that the sixteen hundred be released to me and the four hundred be released to Mr. Dardi, and I had intended to sell the sixteen hundred, and that was agreeable to Mr. Dardi, but not with counsel, as I recall.

Mr. Clausen: Counsel has handed me a letter. I

(Testimony of Phillip Barnett.)

don't know the purpose of it, Counsel, because from the witness' testimony this was never signed and sent. [86]

Mr. Robertson: He just testified, Counsel, that Mr. Dardi requested that the four hundred shares he had there be released and that he prepared a letter for your signature, or signature of Blair and himself to release these shares of stock.

Mr. Clausen: Which Blair never signed, that is my point, never signed; therefore, the letter was never of any effect.

Mr. Robertson: That is what he testified to, Blair never signed it.

Mr. Clausen: That's right.

Q. (By Mr. Robertson): Well, I will show you a copy of a letter under date of October 24, 1951, which is unsigned, addressed to Dean Witter and Company, and prepared for the signature of yourself and Blair Holdings Corporation, and ask you if that is the letter you just referred to in your testimony?

A. Yes, that is correct. My recollection is I signed it, but Blair refused to sign it.

Q. You drew that originally at the request of Virgil Dardi?

A. Yes, and that was prior to this litigation.

Q. And at that time, Virgil Dardi was the President of Blair Holdings Corporation?

A. That's correct.

Mr. Robertson: We will offer this letter as Defendant Bay City Bank's next in order, your Honor.

(Testimony of Phillip Barnett.)

Mr. Clausen: To which we object, if the Court please, it is a proposed release from this escrow of the two thousand [87] shares which Blair objected to and never signed.

The Court: Well, the ultimate fact is, we agree on it, he made an offer. I will allow it for that limited purpose. May be admitted next in order.

The Clerk: Defendant's Exhibit H admitted and filed in evidence.

(Whereupon copy of letter dated October 24, 1951, unsigned and addressed to Dean Witter, referred to and more particularly described at Page 87 of this transcript, was received in evidence and marked Defendant's Exhibit H.)

Q. (By Mr. Robertson): Mr. Barnett, directing your attention to this stipulation under date of May 19, 1950, and Paragraph Four thereof, the language states as follows:

“Blair stipulates that an order may be entered discharging that certain bond in action 383427 in the principal amount of \$50,000 put up under order dated February 8, 1949, as ordered by Honorable Milton P. Sapiro, Judge of the Superior Court, requiring Bay City to indemnify Blair in the event that Blair and others, as stated in said order, shall be damaged by reason of the transfer of said stock, upon the condition that E. J. Crofoot in the afore-said litigation agrees to guarantee and to indemnify Blair and does hereby and indemnify Blair and save [88] and hold harmless, Blair, up to the ex-

(Testimony of Phillip Barnett.)

tent of \$15,000, its officers, transfer agents and register agents against any loss, damages or expenses or other liability by reason of the recordation or the transfer or the issuance of new certificates of shares as required by said order, and further agrees to escrow forthwith two thousand shares of Blair stock in the place and stead of said bond, being the said two thousand shares of stock which Crofoot received from Bay City on sale of collateral to pay its loan to Crofoot of approximately \$35,000."

I will ask you if, on behalf of the Bay City Bank, you caused two thousand shares of Blair stock, which was held as security for the note, to be transferred to E. J. Crofoot at that time?

A. No, no.

Q. And I will ask you if E. J. Crofoot to your knowledge ever received two thousand shares of Blair stock from Bay City Bank, an alleged balance existing in the twenty thousand shares put in Dean Witter?

A. No.

Mr. Clausen: I will object. I had in mind your Honor's permission.

Q. (By Mr. Robertson): I will ask you, Mr. Barnett, if pursuant to this escrow stipulation and letter, if two thousand [89] shares on May 26, 1950, were put in escrow in Dean Witter and Company?

A. We only had sixteen hundred, I don't know the dates, but there is nothing mysterious about what occurred.

We had sixteen hundred there and as a courtesy



(Testimony of Phillip Barnett.)

we permitted that to stand, but Virgil Dardi put four hundred in and that made up the two thousand shares.

Q. Now, following——

A. We never put any additional in, just let that ride for the time being.

Q. That was sixteen hundred shares left after the sale of the twenty thousand?

A. That is correct.

Q. Now, the last paragraph of Section Four of the stipulation provides:

“Said two thousand shares of stock shall be left in escrow in the possession of Dean Witter and Company, pending a written order releasing the same on order of Crofoot and Blair, or the order or award of said Arbitrator directing said release.”

First, I will ask you if the Arbitrator rendered any order or award in his award concerning these two thousand shares of stock in escrow in Dean Witter and Company?

Mr. Clausen: Object to that, your Honor, on the ground the award speaks for itself. Your Honor, this question calls [90] for the opinion as to what this paper says, this document. This is the award.

The Court: If he knows, he may answer, and you may cross-examine. I will allow it.

The Witness: No, it didn't, except it absolved the Bay City Bank and Trust Company of any and all of these charges made by Blair.

Mr. Robertson: I will ask you, Mr. Barnett, concerning that part of the stipulation that the two

(Testimony of Phillip Barnett.)

thousand shares shall be released upon the written order of Blair and Crofoot, I will ask you what your understanding at the time of the execution of this stipulation was concerning the release of the said two thousand——

Mr. Clausen: Object to that, only violates—pardon me.

The Witness: Before the escrow——

Mr. Clausen: Pardon me, Counsel.

The Witness: I beg your pardon.

Mr. Clausen: Your Honor, we object to that as calling for the conclusion of the witness, no foundation laid, and violation of the parol evidence rule, asking a witness whom he knows is a lawyer what his understanding of something is when the understanding is expressed in writing.

Mr. Robertson: He is a party to this action, your Honor, a party to this agreement, asking him what his understanding of that word “release” was at the time this stipulation was entered [91] into.

The Court: I will allow it subject to your motion to strike and over your objections.

The Witness: Well, it was only a means or device by which, when the purposes of the bond had been accomplished, the escrow condition would be released, taken off, and then the stock would go to the people who had it, Bay City and Dardi. We had a little difficulty in language. I think Mr. Crofoot had a different view of it than some of us, but that was the purpose, and that was the reason it was put up, wasn't a transfer of title at all. When the pur-

(Testimony of Phillip Barnett.)

poses of the bond had been accomplished why, you just take off the escrow condition.

Q. (By Mr. Robertson): Now, I will ask you, Mr. Barnett, following the entry of this arbitration award, which was in August of 1950, but prior to the determination of that action in the Appellate Court, which was in 1953, did you write to Dean Witter and Company concerning the sixteen hundred shares held in that escrow?

A. I believe I did, yes; not only wrote, but I phoned frequently.

Mr. Clausen: I would object to this letter, your Honor, as including my other grounds, and the ground that it is self-serving, a letter by this witness to Dean Witter and Company on November 14, 1951.

Mr. Robertson: The record shows—— [92]

Mr. Clausen: Self-serving, your Honor, in that he there set forth his contentions regarding his claim to the stock, as being self-serving.

Mr. Robertson: If it please the Court, the record shows that prior to the institution of this suit, which was, I believe, very late in 1951, or the first part of 1952—I believe it was December of 1951—Dean Witter, holding the sixteen hundred shares of the two thousand shares of stock, wrote to each of the parties concerned. They wrote to Blair, they wrote to Bay City Bank, wrote to Mr. Crofoot, Mr. Barnett, and asked them to state what their interest was in said shares of stock.

Now, I am asking Mr. Barnett if he wrote on November 14th, 1951, in reply to that letter of Dean

(Testimony of Phillip Barnett.)

Witter. Now, these were events and letters which took place prior to the institution of this suit, and I think it is relative to the issue raised in these pleadings.

The Court: Objection overruled. He may answer.

Mr. Robertson: I show you this letter, November 14, 1951, copy of which is sent to Dean Witter and under your signature, and ask if you wrote that letter?

A. Yes, I wrote this letter, at least I dictated it in the office and it was typed and I signed it.

Mr. Robertson: And at this time, I would like to read this letter. [93]

(Reading.)

“I have your letter of November 5, 1951, as well as a letter from Pillsbury, Madison and Sutro under date of November 2nd, which refers to the subject matter of two thousand shares of Blair Holdings Corporation stock.

“You will recall that I deposited twenty thousand shares of stock with you subject to my direction in the sale thereof. From this amount we still have a balance with you of sixteen hundred shares, the other four hundred shares being owned by Mr. V. J. Dardi. You have asked the question whether or not I make any claim of these stock certificates, and if so, the basis for my claim.

“May I suggest that you will recall that I was the one that deposited these shares with you for the account of the Bay City Bank of Bay City, Texas,



(Testimony of Phillip Barnett.)

and they are still subject to my direction. In a spirit of compromise, a stipulation was entered into under date of May 19, 1950, whereby the shares were to be released on the signature of the writer and a representative of Blair Holdings Corporation. This did not affect, in any way, the title to the stock and it is our position that we not only claim a right to the sixteen hundred shares, but we own them. [94] I suggest that you communicate with Pillsbury, Madison and Sutro, Attention Mr. Maurice D. L. Fuller, with whom I have been in contact, for further information. I am sending a copy of this letter to him."

We will offer that as Defendant's Bay City Bank and Trust Company next in order.

Mr. Clausen: Your Honor, may my objection run to that, that I announced?

The Court: Objection overruled, subject to motion to strike.

The Clerk: Defendant's Exhibit I admitted and filed in evidence.

(Whereupon letter Barnett to Dean Witter, dated November 14th, and referred to and more particularly described at Page 93 of this transcript, was received in evidence and marked Defendant's Exhibit I.)

Q. (By Mr. Robertson): I will ask you, Mr. Barnett, at the time this stipulation of May 19, 1950, and the escrowing of the four hundred shares of the Dardi stock and the holding of the sixteen hundred



(Testimony of Phillip Barnett.)

shares of the Bay City stock when that arrangement was made, I will ask you was it intended by you to transfer title of those Bay City shares to Mr. E. J. Crofoot, Blair Holdings Corporation, or anyone else?

A. No, no. [95]

Mr. Clausen: We object, your Honor, on the grounds it calls for a conclusion of the witness, violates the parol evidence rule, no foundation laid.

The Court: Objection overruled. He may answer.

The Witness: No, it was not our intent, nor was it the intent or understanding of anybody connected with it.

Q. (By Mr. Robertson): I will ask you from the date of on or about March 1, 1949, the time the shares were deposited with Dean Witter and Company, to the present time, do you know of your own knowledge whether or not the said shares of stock in that escrow have ever been transferred, the title to said shares from Bay City Bank and Trust Company to any other party?

A. They were always in the account of the Bay City Bank and Trust Company from the time the twenty thousand shares were deposited up to the present time.

Mr. Robertson: I don't think I have any further questions of the witness at this time.

The Court: Take the witness.

(Testimony of Phillip Barnett.)

### Cross-Examination

By Mr. Clausen:

Q. Mr. Barnett, the times of which you speak in, or rather during the years 1948 and onward, you represented and were attorney, were you, Mr. Barnett, for the Bay City Bank and Trust Company?

A. Yes, as well as other parties. [96]

Q. And the other parties were whom?

A. Bay City Bank and Trust Company, Crofoot—E. J. Crofoot, I think at one time a company that Mr. Crofoot was identified with.

Q. And so that during this period——

A. And myself.

Q. And during this period you were attorney for said same E. J. Crofoot who we have referred to here?

A. As of that time, yes, Mr. Clausen.

Q. And the twenty thousand shares of stock to which you referred, having been referred to as initially in the year 1948, the twenty thousand shares had been, according to your testimony here today, twenty thousand shares that Crofoot had and which he had placed with the Bay City Bank and Trust Company?

A. Yes, prior to any of these proceedings.

Q. Now, the twenty thousand shares of stock Mr. Crofoot had received and had in his possession were twenty thousand shares of stock that he had received from Blair, isn't that correct?

(Testimony of Phillip Barnett.)

A. Well, I think he received what was six hundred thousand shares, or \$600,000—well, that was part of it.

Q. Part of the——

A. Yes, I think he transferred his business to Blair for \$600,000—I may be wrong as to the figures, Mr. Clausen, part of which, when Blair couldn't pay the money, they gave him shares of stock without any restriction on those shares of [97] stock, so he went to the Bay City Bank and Trust Company and borrowed some money and placed twenty thousand shares of that stock for that money, yes, that's correct.

Q. The twenty thousand shares, then, is part of the deal by which Crofoot got a certain amount of stock in connection with the Blair-Crofoot deal, as referred to in the Arbitrator's award?

A. I can't say if it is the identical shares of stock or not, but he did receive shares of stock, and it is my understanding that part of that was pledged.

Q. And that was the twenty thousand shares you placed with the Bay City Bank?

A. Yes, that's correct.

Q. Now, during this time, Mr. Barnett, in 1950, Mr. Crofoot, during that year, at least, was a resident of California, was he?

A. I can't answer that, Mr. Clausen; I don't recall.

Q. Well, in the year, Mr. Barnett, you know this litigation was initiated and that in connection with

(Testimony of Phillip Barnett.)

the Bay City Bank and Trust Company case that there were certain attachments; you recall that you represented Mr. Crofoot also in the Atlantic Basin Iron Works case?

A. Wasn't that after this, Mr. Clausen? I think you're getting the dates mixed up. The first case was this suit——

Q. Not speaking of the first in point of—— [98]

A. (Continuing): Bay City Bank and Trust Company to force your people to transfer the stock. Then after that you came in with some cross-complaints, and the cross-defendants came in with some cross-complaints, and I think one of them was this Atlantic suit, but that was afterwards.

Q. The Atlantic Basin and Iron suits were filed in 1948 or 1949; in any event that was another action.

A. I wish you would look and tell me when it was filed, Mr. Clausen. It seems to me it was filed after this Bay City suit.

Q. Assuming it was, Mr. Barnett, would it have been filed, dated in the year 1949?

A. I don't know, but you ought to know when it was filed.

Q. In any event, tell me, do you recall in that case there was an attachment levied and you yourself, as attorney for Mr. Crofoot, filed papers contending that Mr. Crofoot was a resident?

A. I don't recall, Mr. Clausen. Whatever I did is on the record, and I will stand on it.

(Testimony of Phillip Barnett.)

Q. Now, in the answer——

Mr. Clausen: May I have the pleadings in this case?

Q. (By Mr. Clausen): I show you, Mr. Barnett, a document apparently drawn in your own office, filed in this Court on January 19, 1952, being an answer by E. J. Crofoot, and your signature on Page 2 as attorney for E. J. Crofoot, and his [99] signature on the third page under the verification.

I will ask you when you filed that in this Court?

A. If it's there, we filed it.

Q. All right.

Now, I invite your attention, Mr. Barnett, to Page 2, Lines 9 and 10, where it is stated that certain allegations are denied, except the allegation that E. J. Crofoot is a resident of the City of Sacramento, State of California. Does that refresh your recollection?

Mr. Robertson: Excuse me.

Q. (By Mr. Clausen): Does that refresh your recollection that Mr. Crofoot in the year to which this reference was made was a—that is in the year 1951—was a resident of California?

The Witness: If it states that, of course, that is correct.

Mr. Robertson: Just a minute——

Q. (By Mr. Clausen): Would you look at that, Mr. Barnett, and see whether you can tell me now as to whether in the year 1951 Mr. Crofoot was a resident of the State of California?

Mr. Robertson: I think that answer, Counsel,



(Testimony of Phillip Barnett.)

refers to the residency at the time this particular suit was instituted, because residence had to be stated to show diversity of citizenship. I don't think it refers back to 1951, this is an answer to the present complaint in this suit on file, although I can't quite see the materiality of the question whether or not [100] Mr. Crofoot was a resident in 1950.

Q. (By Mr. Clausen): Can you answer the question?

The Witness: I don't know what you are asking.

Q. (By Mr. Clausen): Whether that allegation and that answer that you yourself filed refreshes your recollection as to whether Mr. Crofoot in 1951 was a resident of the State of California.

A. Well, if it says that here, of course that is a fact as related by him, that he was a resident of Sacramento. I think that is the fact.

The Court: The Court will be advised on what is the purpose of the establishment of that?

Mr. Clausen: The purpose, your Honor, the purpose is that in the year, as your Honor heard this morning, in the year 1951, there were some levies of execution made. I do that to show the residence at that time of Mr. Crofoot.

Mr. Robertson: If it please the Court, the answer of Mr. Crofoot here says, answering Paragraph 2 of the Complaint in this very suit before your Honor now, admits, and so forth and so on, and in the complaint it says Mr. Crofoot is a resident of such and such, and this answer is in answer

(Testimony of Phillip Barnett.)

to the Complaint, it refers to his residency in 1953 at the time this suit was filed.

Mr. Clausen: All right.

Now, Mr.—may I proceed, your Honor. [101]

Q. (By Mr. Clausen): Mr. Barnett, you know this matter—will you refer to your files of the Atlantic Basin Iron Works case, to the allegations of residence in that case which you yourself prepared, and tell me whether in the year 1951, Mr. Crofoot was a resident of California?

A. I can't answer that, Henry, you know that. He moved out here from—let's see, he worked for Blair in New York when—you know all of that; if you will give me the dates, I will tell you, but I don't know.

He moved out to Sacramento sometime and lived up there and I think he is still living up there.

Mr. Clausen: Your Honor, my question is, if Mr. Barnett will do that, we perhaps could stipulate to the fact. In other words, I desire to prove his residence in the year 1951 and I know that Mr. Barnett prepared the papers.

The Court: What was his residence, if you know?

The Witness: Well, all I know, your Honor, is that he originally lived in Texas. He moved to New York and worked for Blair and Company, was their executive vice-president, and he also was the head of the Atlantic Basin and got into some squabble. Then he came, went back to Texas. He came to San Francisco, and then he went up to Sac-

(Testimony of Phillip Barnett.)

ramento where his mother and father lived. The exact dates of that I don't recall. I do know he is a resident of Sacramento now, and I believe he was when this Atlantic Basin suit was filed. What [102] date it is, I don't know.

Mr. Clausen: And the reason, your Honor, I am asking if Counsel will refer to his own files, he has got those files, I can show him the exact place in the file where that statement is set forth as to residence.

Mr. Robertson: If he will state he knows it as a fact that the files disclose he was a resident of California in 1951, we will so stipulate, your Honor.

Mr. Clausen: 1951; very well.

The Witness: Whatever the date is.

Mr. Robertson: I can't see the materiality of this minor question.

Mr. Clausen: That is all.

The Court: That is all; while you are resting, you may step down.

Mr. Robertson: The Bay City Bank and Trust Company and Phillip Barnett, defendants, rest, your Honor. We renew our motion we made this morning for judgment.

Mr. Clausen: I have some evidence.

The Court: Withhold your motion.

Mr. Robertson: Very well.

Mr. Clausen: Your Honor, I desire to put in evidence the disclaimer. I need not take the time of the Court to find it, but it is in the file, by E. J. Crofoot.

The Court: Hand him the file, get a record on it. [103]

Mr. Clausen: I put in evidence, your Honor, the answer filed by E. J. Crofoot in this proceeding, January 25, 1952, and I invite the attention of the Court to the particular portion that I have in mind where it reads as follows, a statement by Mr. Crofoot:

“\* \* \* defendant E. J. Crofoot further states that he claims no right, title or interest in or to any of said two thousand shares of Blair Holdings Corporation stock presently held by Dean Witter and Company for the account of Bay City Bank and Trust Company, and that a letter to this effect was addressed to plaintiff on November 27, 1951.”

With that, your Honor, we make the same motion, your Honor, in respect to the case presented by the Bay City Bank and Trust Company and Barnett to the effect that they have not proved their right to this stock. I have this to suggest: These short excerpts, your Honor, of testimony that have gone before the Court are tied in at various places to the evidence that has been received by the Court. I should like very much, your Honor, to demonstrate our position, our position that we are entitled, your Honor, to have that stock, that Blair have the stock, or in the event that Blair does not have title to the stock, that we are entitled to have compliance with the contract, the signed stipulation, and that the signatories to that signed stipulation, the Bay City Bank and Trust Company, [104] Crofoot and all the rest are estopped, your Honor, from claiming that that two thousand shares of stock should not be



hypothecated or placed or put up, or whatever be the legal position as set forth in that document.

I represent a corporation which, in good faith, accepted the stipulation on the statements therein set forth, and therefore I would like to detail what I have as the basis for so claiming in writing and at the same time, your Honor, to detail my own motions to strike if the Court would permit that to be done in writing.

The Court: Well, in order to clear it up, in order to dispose of the matter on the merits, the motions of both sides will be denied.

Mr. Robertson: Very well, your Honor.

The Court: So that the matter can be disposed of on the merits.

\* \* \*

[Endorsed]: Filed September 29, 1954. [105]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Complaint.

Injunction pendente lite.

Disclaimer.



Answer of Bay City Bank & Trust Co., & Phillip Barnett.

Answer of E. J. Crofoot.

Notice of motion to dismiss.

Answer of Blair Holdings Corp., et al.

Notice of motion for judgment for interpleader, etc.

Affidavit of Donald G. McNeil.

Order discharging plaintiffs from liability, etc.

Order denying motion to dismiss.

Judgment filed Jan. 15, 1953.

Proposed modifications to judgment.

Amendments to notice of motion for modification of judgment.

Notice of motion for modification of judgment.

Order for entry of judgment.

Objections to and proposed modification of proposed findings of fact, conclusions of law and judgment.

Affidavit of J. H. Marden.

Objections to and proposed modification of proposed findings of fact, conclusions of law and judgment.

Findings of fact and conclusions of law.

Judgment.

Affidavit of Phillip Barnett supporting order to show cause.

Order to show cause.

Substitution of attorneys.

Affidavit of D. A. Hughes upon order to show cause re contempt.

Notice of appeal to the Court of Appeals.

Cost bond on appeal.

Appellant's designation of record.

Defendant Blair Holding Corp. Exhibits 1-B through 12-B.

Defendants Bay City Bank & Trust Co. and Phillip Barnett Exhibits A through I, inclusive.

Reporter's transcript of trial, June 9, 1954.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 18th day of October, 1954.

[Seal] C. W. CALBREATH,  
Clerk.

By /s/ WM. C. ROBB,  
Deputy Clerk.

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[Endorsed]: No. 14552. United States Court of Appeals for the Ninth Circuit. Blair Holdings Corporation, a Corporation; Blair-Rollins & Co., Incorporated, a Corporation, and Blair & Co., Inc., of New York, a Corporation, Appellants, vs. Bay City Bank and Trust Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed October 18, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 14552

BLAIR HOLDINGS CORPORATION, a Corpora-  
tion, et al.,

Appellants,

vs.

DEAN WITTER, et al.,

Appellees.

APPELLANTS' STATEMENT OF POINTS  
ON APPEAL

To the Honorable Chief Justice and Associate  
Justices of the United States Court of Appeals  
for the Ninth Circuit:

Appellants respectfully state that the following  
are the points upon which they intend to rely on  
appeal:

1. The trial court erred in declaring Bay City  
Bank and Trust Company to be the owner in fee of  
1600 shares of Blair Holdings Corporation stock on  
deposit in Court.

2. The findings of fact relative to title to the  
1600 shares of Blair Holdings Corporation deposited  
in Court are not supported by the evidence.

/s/ MARSHALL E. LEAHY,

/s/ JOHN F. O'DEA,

Attorneys for Appellants.

[Endorsed]: Filed January 3, 1955.

